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Volume III

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

October Term, 1947

No. 464

FEDERAL TRADE COMMISSION, PETITIONER

vs.

MORTON SALT COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED DECEMBER 2, 1947
CERTIORARI GRANTED JANUARY 12, 1948

In the

United States Circuit Court of Appeals

For the Seventh Circuit

No. 8703

MORTON SALT COMPANY,

Petitioner,

vs.

FEDERAL TRADE COMMISSION,

Respondent.

Petition for Review of Order of the Federal Trade Commission.

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2717 Room 116, Sherman Hotel,
Chicago, Illinois,
Tuesday, October 13, 1942.

Met, pursuant to adjournment, at 11 a. m.

Before:

James A. Purcell, Trial Examiner.

Appearances:

John T. Haslett, Esq., Attorney for the Federal Trade Commission.

L. H. McBride, Esq., 310 South Michigan Avenue, Chicago, Illinois, attorney for respondent.

2718 Mr. McBride: Mr. Examiner, before continuing with the examination of witnesses, I wish to state for the record, consistent with the discussion off the record, that the respondent will have no further examination of witnesses and no further testimony or evidence with respect to each or all of its exhibits, beginning with Respondent's Exhibit No. 17, to and including Respondent's Exhibit No. 27, and that with the completion of the hearing in Chicago, all evidence or testimony in support of or pertaining to those Respondent's Exhibits will have been completed by the respondent insofar as the hearings currently being held are concerned.

Trial Examiner Purcell: Let the record so show.

Mr. McBride: Miss Reporter, I ask that you mark this as Respondent's Exhibit No. 28 for identification.

(The document referred to was marked Respondent's Exhibit 28 for identification.)

Mr. McBride: I ask that this be marked Respondent's Exhibit No. 29 for identification.

2719 (The document referred to was marked Respondent's Exhibit 29 for identification.)

Mr. McBride: Is it stipulated, Mr. Haslett, by and between counsel for the Commission and counsel for the respondent that Respondent's Exhibit 28 for identification is a tabulation from the sales records of the Morton Salt Company, showing the purchases of all branches, the combined purchases of C. D. Kenny Company and all branches thereof for the years 1937 to 1941, inclusive, with respect

to the number of Blue Cans purchased, the net value after freight of the Blue Cans purchased, the net value of sales after freight of all other salt purchases, and the total value of Blue Can and all other salt purchases, which tabulation is to be an amendatory exhibit to Commission's Exhibit No. 181-I, which was supplied by Daniel Peterkin, Jr., pursuant to a subpoena duces tecum served upon him by the Federal Trade Commission, but which Commission's Exhibit 181-I has since been discovered by Morton Salt Company as inadvertently omitting sales to C. D. Kenny Company by the Morton Salt Company at the Kansas City office of the latter?

Mr. Haslett: It is so stipulated.

Mr. McBride: And is it also stipulated, Mr. Haslett, by and between counsel for the Commission and counsel for the respondent that Respondent's Exhibit No. 29 for identification is a tabulation from the sales records of
2720 the Morton Salt Company showing sales by that company to National Retailer-Owned Grocers for the years 1937 to 1941, inclusive, with respect to the number of cases of Blue Can, the net value after freight of the Blue Can, the net value after freight of sales of all other types of salt, and the total net value after freight of all salt sales to the N. R. O. G. and all branches or members thereof for the entire country, said Respondent's Exhibit No. 29 for identification being amendatory to Commission's Exhibit 181-C, which latter exhibit was supplied by Mr. Daniel Peterkin, Jr., pursuant to a subpoena duces tecum served upon him by the Federal Trade Commission, but which Commission's Exhibit 181-C inadvertently omitted to include sales by the Morton Salt Company to N. R. O. G. at the Kansas City office of Morton Salt Company?

Mr. Haslett: It is so stipulated; and, Mr. McBride, would you advise me whether or not, when you say net value after freight, whether or not you mean other allowances and discounts on either of the two documents?

Mr. McBride: With respect to both Respondent's Exhibits 28 and 29 for identification, any and all dollar figures shown on those respective exhibits are net value after freight, without adjustment for returns and allowances, and without adjustment for any discounts or competitive adjustments paid.

2721 Mr. Haslett: It is so stipulated for both documents.

Trial Examiner Purcell: That last one was amendatory of Commission's Exhibit 181-C?

Mr. McBride: That is correct.

Trial Examiner Purcell: And the prior one, your Exhibit 28, was amendatory to 181-I?

Mr. McBride: That is correct.

I offer in evidence, Mr. Examiner, Respondent's Exhibits 28 and 29.

Mr. Haslett: No objection to either of the documents.

Trial Examiner Purcell: There being no objection, the documents offered will be received in evidence and marked by the official reporter as Respondent's Exhibits 28 and 29, respectively.

(The documents referred to, heretofore marked for identification RESPONDENT'S EXHIBITS 28 AND 29, were received in evidence.)

Trial Examiner Purcell: Proceed, gentlemen.

Mr. Haslett: Mr. Examiner, at the adjournment on yesterday Mr. Connor, one of the employees of the Morton Salt Company, was tendered to me for cross-examination.

I would like to note on the record at this time, with permission of counsel for the respondent, that I am re-
2722 serving cross-examination of Mr. Connor until some later date in the hearings here in Chicago.

Mr. McBride: I have no objection.

Trial Examiner Purcell: It is so ordered. Call your next witness.

Mr. McBride: I will recall to the stand for direct examination, Mr. Examiner, Mr. Arnold J. Coyne on behalf of the respondent.

ARNOLD J. COYNE was thereupon recalled as a witness for the respondent and, having been previously duly sworn, testified as follows:

Direct Examination by Mr. McBride.

Q. Mr. Coyne, I show you Respondent's Exhibit No. 25 and call your attention to the item "Distribution department, Chicago", appearing under the sub-heading "General office salaries", and ask you to explain, if you will, the functions and duties of the distribution department.

A. Their duties would have to do with the compiling of

various price schedules and the price sales in effect in the various territories.

Q. And by "price schedules" and "price scales", do you mean the scales and schedules which are used by salesmen of the Morton Salt Company in the process of soliciting orders?

2723

A. I do.

Q. Then in specifying to the accounting department the salaries to be included in Respondent's Exhibit No. 22, you specified, among other things, the salaries of the distribution department, is that correct?

A. That is correct.

Q. And the distribution department has its offices in the Chicago office of the Morton Salt Company, is that correct?

A. That is correct.

Q. Referring now to the next-to-the-last item on Respondent's Exhibit 25, under the heading "Salaries", Salt Tablet department, does that include any salaries with respect to the production of salt tablets, or is it confined to the sales end of the Salt Tablet department, sales or clerical end of the Salt Tablet department?

A. The clerical end of the Salt Tablet department only.

Q. There are no salaries reflected in that item for the Salt Tablet Department having to do with the production of Salt Tablets, is that correct?

A. None whatever.

Q. Would the same thing be true with respect to the Smoke Salt department appearing next, under the heading "Salaries" on Respondent's Exhibit 25? That is, does that include any salaries for production operations or is it confined to clerical?

2724

A. Clerical only.

Q. Referring now, Mr. Coyne, to Respondent's Exhibit 27, in requesting the figures from the accounting department appearing on that item, did you specify that there be eliminated from the first item "Advertising expense" the amount shown on the accounting records for Muslin Signs and Road Signs?

A. I did.

Q. Will you state the reason for the exclusion of that item in your request to the accounting department?

A. The Muslin Signs and Road Signs are more on a national basis; they are placed everywhere, so that is the reason that particular item was excluded from the schedule.

Q. Referring now, Mr. Coyne, to Respondent's Exhibit 24 and in particular to the first column of figures on that exhibit, identified as the "number of invoices issued", the figure 1,993 appears opposite "50,000-case customers".

Will you state where that figure came from, Mr. Coyne?

A. An actual count of the invoices.

Q. Is that the same total of the computations or tabulations appearing in the sixth column of figures, appearing on Respondent's Exhibit 19?

A. Yes, it is.

2725 Q. Now, with respect to the next figure in the same column on Respondent's Exhibit 24, being the figure 2,953, opposite "$50,000 customers", will you state where that figure came from?

A. It is an actual count of the invoices.

Q. And is that the same figure as appears as the total of the tabulations on Respondent's Exhibit 18 in the sixth column of figures appearing on the latter exhibit?

A. It is.

Q. With respect to the next figure in the first column of figures on Respondent's Exhibit 24, being the figure 4,707, opposite the item "50,000-case customers", will you state, Mr. Coyne, where that figure comes from?

A. From an actual count of the invoices.

Mr. Haslett: Mr. Examiner, may I note an objection to this line of questioning upon the grounds that these documents speak for themselves, and, if these figures are in other documents, that can be so shown. They need no explanation.

If by Mr. McBride's examination of this witness he is trying to explain this document known as Respondent's Exhibit 24, I think that is rather superfluous. It doesn't need any explanation. The figures are now a part of the record.

Trial Examiner Purcell: I will overrule the ob-
2726 jection on the ground that I assume that all counsel is trying to do is to clear up and connect up these various documents, and I think that that will be very helpful to the Commission and to counsel for the Commission in the future.

Mr. Haslett: Is that the reason for it, Mr. McBride?

Mr. McBride: That is the purpose, simply to identify the source of the figures, and the method of computation, so as to show the interrelation between the various cost schedules introduced in evidence.

Trial Examiner Purcell: I assumed, Mr. McBride, that that was the reason.

Mr. Haslett: I will withdraw my objection, Mr. Examiner.

Trial Examiner Purcell: Let the record show the withdrawal of the objection by counsel for the Commission. You may proceed, sir.

By Mr. McBride:

Q. And is that the same figure as appears as the total of the first column of figures on Respondent's Exhibits 20-A and 20-B, Mr. Coyne?

A. It is the same.

Q. Now, with respect to the next figure in the same column on Respondent's Exhibit 24, being 97,827, opposite the item "Carload customers", will you state where
2727 that figure comes from?

A. From an actual tabulation of the invoices.

Q. And is that the same figure, Mr. Coyne, which appears under the tabulation for "Credit operations" on Respondent's Exhibit 22, identified as "Total invoices to carload customers"?

A. It is.

Q. For purposes of this Respondent's Exhibit No. 24, Mr. Coyne, will you describe what is included in the item "Carload customers"? By that I mean the type of customer involved in the description "Carload customers."

A. That would be all customers, excluding the quantity discount customers, who might be either wholesale or retail or consumer non-discount customers.

Q. In other words, it would include all customers, regardless of their nature or the type of purchases, exclusive of the customers included under the items of "50,000-case customers", "$50,000 customers", and "5,000-case customers" on Respondent's Exhibit 24, is that correct?

A. That is correct.

Q. And referring now to the last item in the first column of figures on Respondent's exhibit 24, being the item 11,942, will you state where that figure came from?

A. An actual count of the invoices.

Q. And that is opposite the item "Inter company
2728 sales." By that do you mean sales to subsidiaries or affiliates of the Morton Salt Company?

A. I do.

Q. And that reflects all invoices for the period in ques-

tion, does it, insofar as sales to subsidiaries or affiliates of the Morton Salt Company are concerned?

A. Yes.

Q. Referring now, Mr. Coyne, to the total 119,422, under the first column of figures on Respondent's Exhibit 24, is that the same figure which appears on and was employed in the computations under the heading "Invoicing operations" on Respondent's Exhibit 22, identified at that point as "Total invoices to all customers"?

A. Yes.

Q. Referring now to the second column of figures, Mr. Coyne, on Respondent's Exhibit 24, there appears the figure 41 cents opposite "Carload customers", and I ask you to state where that figure comes from.

A. That is our credit and collection cost for the carload customers.

Q. And does that come from the tabulation shown under "Credit operations" on Respondent's Exhibit 22?

A. It does.

Q. Referring now to the third column of figures on Respondent's Exhibit 24, with respect to which the figures $2.65½ appears for all items other than "Specialty sales expense", will you state where that figure comes from?

2729

A. Your Exhibit No. 22. It is our invoicing cost per invoice.

Q. And that is the final computation under the heading "Invoicing operations" on Respondent's Exhibit 22, is that correct?

A. That is correct.

Q. Referring now to the fourth column of figures on Respondent's Exhibit 24, where the figure 57 cents appears with respect to all items except Specialty sales expense, state where that figure comes from.

A. It is the plant expense, plant clerical, for the invoicing procedures.

Q. Does that come from Respondent's Exhibit No. 21?

A. It does.

Q. Now, referring, Mr. Coyne, to the fifth column of figures identified as "Total cost" on Respondent's Exhibit 24, will you state how the figures in that column were computed in each instance with respect to all the items shown?

A. That would be your invoicing cost of $2.65½, and the plant cost of 57 cents, totalled and multiplied by the number of invoices in the first column of figures.

Q. And was the computation in the fifth column of figures arrived at in the same manner with respect to all the
2730 items or classes of customers shown, Mr. Coyne?

A. Yes.

Q. Calling your special attention to the class of customers identified as carload customers, will you state in particular how the figure $355,601.15 was arrived at for that class as it appears on the fifth column of figures?

A. That would be our credit costs of 41 cents per invoice, our invoicing cost of $2.65½ per invoice, and the plant cost per invoice of 57 cents; it would be the total of those three multiplied by the number of invoices issued, shown in the first column of figures.

Q. For carload customers?

A. For carload customers.

Q. Referring now to the sixth column of figures on Respondent's Exhibit 24, will you state where the figures in that column came from, with respect to each of the classes of customers involved?

A. A tabulation of the invoices.

Q. With respect to the item appearing for 50,000-case customers, is the total for that class in the sixth column of figures on Respondent's Exhibit 24 carried over from the total of the tabulations in the fifth column of figures on Respondent's Exhibit 19?

A. Yes.

Q. With respect to the totals shown in the fifth
2731 column of figures on Respondent's Exhibit 24, for $50,000 customers, is that total carried over from the total in the fifth column of figures on Respondent's Exhibit 18?

A. Did you say the fifth column on Schedule 24 or the sixth column?

Q. I may have said the fifth; I meant the sixth, in any event, on Respondent's Exhibit 24. That is the same as the total in the fifth column on Respondent's Exhibit 18?

A. Yes.

Q. And with respect to the totals shown in the sixth column of figures on Respondent's Exhibit 24 for the class of customers identified as "5,000-case customers", is that total carried over from the third column of figures on Respondent's Exhibit 20-B?

A. It is.

Q. Then will you describe, Mr. Coyne, how the figure

in the sixth column of figures on Respondent's Exhibit 24, with regard to carload customers, was arrived at?

A. From a tabulation of the invoices for carload customers.

Q. For the period shown by Respondent's Exhibit 24, is that correct?

A. That is correct.

Q. Now, with respect to the seventh column of figures on Respondent's Exhibit No. 24, will you state how the computations for the respective classes of customers
2732 were made in that column, beginning with the figure .0112 and ending with the figure .0738?

A. That would be the total cost divided by the total net sales for each class of customers shown in the exhibit.

Q. In other words, to arrive at the figure in column seven of figures on Respondent's Exhibit 24, with respect to each class of customers, the figures in column five were divided by the figures in column six, is that correct?

A. That is correct.

Q. Now, with respect to the figures appearing in column eight of Respondent's Exhibit 24, which figure .0738 appears with respect to three classes of customers, will you state how that figure was arrived at?

A. By taking the total cost for the carload customers, which is shown as the figure $355,601.15, in column five, divided by the total net sales for that particular grouping.

Q. The total net sales appear for that class of customer in column six, is that correct?

A. That is correct.

Q. Now, with respect to the figures appearing in the ninth column of Respondent's Exhibit 24, identified as "Savings per sales dollars", will you state how the first figure, .0626, in that column was arrived at?

A. That is the difference between the figure shown in the seventh column, deducted from the cost shown in
2733 the eighth column.

Q. Having reference, now, to 50,000-case customers, is that correct?

A. That is correct.

Q. Now, with respect to the next item or the next figure in column nine of Respondent's Exhibit 24, being the figure .0724, will you state where that figure came from?

A. That is our Specialty sales expense shown in Schedule 23.

Q. By "Schedule 23", you mean Respondent's Exhibit 23?

A. I do.

Q. With respect, now, to the figure .0556, next appearing in column nine of figures on Respondent's Exhibit 24, will you state where that came from?

A. That likewise is the difference between the cost per sales dollar shown in column 7 deducted from the cost for carload customers per sales dollar in column eight.

Q. Having particular reference now to $50,000 customers, is that right?

A. That is right.

Q. And was the computation made the same way for 5,000-case customers, having the figure .0567 in the ninth column on Respondent's Exhibit 24?

A. Yes.

Q. Now, referring to the tenth column of figures 2734 on Respondent's Exhibit 24, will you state how the figure $35,893.84 was computed?

A. By multiplying that figure by the total net sales for the 50,000-case customers.

Q. By "that figure", what do you mean, Mr. Coyne?

A. I mean the figure .0626, shown in the ninth column.

Q. And that figure was multiplied by what other figure, Mr. Coyne?

A. The total net sales in column six.

Q. And that is in order to produce the figure $35,893.84 in the tenth column for 50,000-case customers, is that correct?

A. That is correct.

Q. Now, will you state how the figure $40,366.23 was arrived at, being the next figure in column ten?

A. By multiplying the total net sales in column six by the figure .0704 shown in column nine.

Q. And the total net sales in question are those of the 50,000-case customers, is that correct?

A. That is correct.

Q. Now, with respect to the figure $29,069.94 appearing in the tenth column for $50,000 customers, how was that arrived at, Mr. Coyne?

A. By multiplying the total net sales in column six by the figure .0556 shown in column nine.

Q. And was the figure $50,203.57 in the tenth column

for 5,000-case customers arrived at by multiplying
2735 the respective figures in the sixth and ninth columns for 5,000-case customers also?

A. Yes.

Q. Referring now to the last column of figures on Respondent's Exhibit 24, will you state where the $56,487.67 came from?

A. That is the total discount, as shown in Exhibit 19.

Q. Respondent's Exhibit 19?

A. Yes.

Q. And that is the total of the last column of figures on that exhibit carried forward into Respondent's Exhibit 24, is that correct?

A. That is correct.

Q. Now, with respect to the next item, $25,940.42, on Respondent's Exhibit 24, will you state where that figure came from, Mr. Coyne?

A. The last column of figures in Respondent's Exhibit No. 18.

Q. And that was carried forward to the last column of Respondent's Exhibit 24, for $50,000 customers, is that correct?

A. That is correct.

Q. And now with respect to the figure $43,482.00, also in the last column of Respondent's Exhibit 24, will
2736 you state where that figure came from?

A. From the last column of figures in Respondent's Exhibits Nos. 20-A and B.

Q. Mr. Coyne, referring again to Respondent's Exhibit 24 and to the figure for the class of customers identified as "Carload customers" in the sixth column, will you state what sales of what types of salt are included in that figure?

A. All types of salt.

Q. And I believe you testified that that figure was arrived at by tabulation from the sales records of the Morton Salt Company, is that correct?

A. That is correct.

Q. Does that figure in any way reflect sales out of the Kansas City, Dallas, or San Francisco offices?

A. No, it does not.

Q. Does it include all sales of the type you have described for the Chicago and associated billing offices?

A. Yes.

Q. Mr. Coyne, with respect to all of the respondent's exhibits, from Respondent's Exhibit 18 through Respondent's Exhibit 27, the period September 1, 1939, to August 31, 1940, has been employed.

Who determined the period to be employed with respect to each of the exhibits just referred to?

A. Well, that particular period was picked because it was the nearest twelve-month's period after the filing
2737 of the complaint of the Commission.

Q. After the filing or prior to the filing?

A. Prior to the filing of the complaint.

Q. And was that period chosen by you and other officials of the Morton Salt Company as the period of computation to be used for the cost data for that reason?

A. It was.

Q. There is no other special significance to the period chosen, other than what you have described?

A. None whatever.

Q. And that period represents, does it, Mr. Coyne, from your experience in the Morton Salt Company, a typical period for the invoicing and credit and other cost procedures to which you have testified, is that right?

A. It does.

Trial Examiner Purcell: We will have a five-minute recess.

(A short recess was taken.)

Trial Examiner Purcell: On the record. The recess is over.

By Mr. McBride:

Q. Mr. Coyne, in connection with your testimony regarding the use of the words "competitor group", where the same appears from time to time on Respondent's Exhibits 9-A through 10-E, inclusive, you testified, in
2738 substance, that the customers of the Morton Salt Company included under that grouping were those customers identified as competitors by witnesses on behalf of the Commission. Do you recall that testimony?

A. Yes.

Q. Do you now wish to correct your testimony in that regard, as to the type of customers included in the words "competitor group" where the same appears in those exhibits which I have identified?

A. Yes.

Q. Will you then correct your testimony?

A. The competitor group would include any customers named as competitors by witnesses for the Commission and it would also include any other non-discount customers operating in the same territory, at the various branches of the Consolidated houses listed.

Q. By "non-discount customers", you mean non-discount wholesale customers of the Morton Salt Company?

A. Yes.

Q. And by the places or branches where Consolidated Company operates, do you mean all of the State of Louisiana, exclusive of the city of New Orleans?

A. I do.

Mr. McBride: Mr. Examiner, that completes my
2739 direct examination of Mr. Coyne, and I tender him to counsel for the Commission for cross-examination.

2742 Room 118, Sherman Hotel,
Chicago, Illinois,
Friday, October 16, 1942.

Met, pursuant to adjournment, at 10 a. m.

Before:

James A. Purcell, Trial Examiner.

Appearances:

John T. Haslett, Esq., Attorney for the Federal Trade Commission.

L. H. McBride, Esq., 310 South Michigan Avenue, Chicago, Illinois, attorney for respondent.

2743 ARNOLD J. COYNE resumed the stand and testified further as follows:

Cross-Examination by Mr. Haslett.

Q. In your direct examination, Mr. Coyne, you testified as to a running order. Will you please advise us what you mean by that term?

A. A running order is an order at the plant. We term that "running order" due to the necessity of including various orders at the plant that are being put in for the

mill operations. That would probably be a recap
2744 of the various orders that they are using at the plant for the various departments in the plant in their production schedules.

Q. How would that order originate?

A. It would originate from detailed information on the orders sent to the plant by the Chicago or one of the offices, one of the associated offices.

Q. Then am I to understand it is a recapitulation of all orders in a plant on a particular day?

A. Yes, it is.

Q. I see. And it originates in the Chicago office and then is transmitted to the plant where it is to be filled?

A. The orders would originate in the Chicago office and then the plant would prepare such information as they need for their various departments of the plant from those orders.

Q. And then what would happen to it after the plant had prepared its information in regard to the running order? What would happen to the order then?

A. The order would be sent to the loading foreman downstairs, awaiting such materials as were specified on those particular orders.

Q. And then he would see that the orders are filled?

A. He would see to it that the orders were checked and the items specified on the orders which were received from Chicago were incorporated in that particular car or whatever it might be.

2745 Q. Would the loading foreman have anything to do with the running order?

A. Nothing other than it would be that from which he works. He would have nothing to do with the running order, that is, in the various departments of the plant, other than the copy of the order which he has at the loading platform for the materials which should come down from the various departments in the plant.

Q. I see sir. Now, Mr. Coyne, Morton Salt Company have a price of $1.60 per case on the round package, Blue Label, free running, and iodized salt on a less-than-carload basis. Would you tell us how that price is arrived at?

Mr. McBride: If the Examiner please, I think I will object to that question from this witness. He hasn't testified as to how any prices were arrived at. There has been ample testimony in the record by executives of the

Morton Salt Company who have to do with the pricing of salt items. If counsel wishes the answer to that, it should be propounded to the proper witness.

Mr. Haslett: This is cross-examination, Mr. Examiner, and those prices were brought out in the direct examination by Mr. McBride. I think I am entitled to go into it a little further, sir.

Mr. McBride: Mr. Examiner, you understand I am not objecting to the question as such but as it is asked
2746 to this witness. This witness wasn't examined as to how any prices were arrived at. The examination with respect to the determination and computation of price has been directed to two men alone, Mr. Peterkin and Mr. Stratford, as far as counsel for the respondent is concerned, and I think also so far as counsel for the Commission is concerned.

Trial Examiner Purcell: Off the record.

(Discussion off the record.)

Trial Examiner Purcell: On the record. The objection is sustained on the grounds stated. You may proceed.

By Mr. Haslett:

Q. Mr. Coyne, do you know how the price of $1.60 for less-than-carload shipments of round package salt was arrived at?

A. I have nothing to do with the making up of prices.

Trial Examiner Purcell: The question is, do you know.

The Witness: No.

By Mr. Haslett:

Q. You stated on your direct examination that the average net value after freight, not including any allowances for returns or discounts or competitive allowances, was $1.40½ for the Blue Can salt on a carload basis.

Now, will you state what would be the average net value after freight, without any allowances for returns or discounts or competitive adjustments on the less-than-
2747 carload price of Morton's Blue Can salt of $1.60 per case?

A. I testified that the average net return was $1.40½ on the Blue Package salt, not separating as to l.c.l. or carload. It is the average net return.

Q. So it would be the same for the l.c.l. shipment as it would be for the carload shipment, is that correct, sir?

A. So far as those computations were concerned, yes.

Q. Mr. Coyne, was the $1.60 price on the less-than-carload shipment of Blue Can salt taken into consideration in arriving at the average net value of the Blue Can salt?

A. All Blue Can was taken into consideration for the period examined.

Q. Whether it was sold on a carload basis or less-than-carload basis?

A. Yes, sir.

Q. What, then, was the average selling price that you arrived at on the Blue Can salt per case?

A. Our list price.

Q. You mean of $1.50 per case?

A. Whatever it was sold at.

Q. Well, it has been selling at $1.50 per case for the past several years, hasn't it?

A. Yes, it has.

Q. So it would be $1.50 per case, wouldn't it?

A. It would be whatever the list price read, whether 2748 it would be $1.50 or $1.60.

Q. I am a little confused, Mr. Coyne. I would like for you to clear me up on this. Am I correct when I state that in arriving at the $1.40½ price that you took into consideration both the $1.50 sale price and the $1.60 sale price of Morton's Blue Can salt, and you arrived at the average of $1.60 per case?

A. We arrived at $1.50 per case.

Q. That is what I want to know. Is that what you arrived at, or what figure did you arrive at?

A. The average net return of $1.40½.

Q. Then the average realized on the carload shipment would be less than $1.40½?

A. The average realized over-all would be $1.40½.

Q. And that would be the average realized on a less-than-carload shipment? Would that be more than $1.40½?

A. I really couldn't answer that question intelligently without going over the records.

Q. You stated that, in arriving at the net value of $1.40½ on the Blue Can salt, you took into consideration both the $1.50 sale price and the $1.60 sale price, is that correct, sir?

A. I took into consideration the total sales after freight of all the Blue Can sold and I testified that we divided

that figure by the number of cases sold to arrive at
2749 the average net return.

Q. Then there was no separation of the $1.50 and $1.60 price?

A. No, sir.

Q. It was all thrown in together and then divided by the number of cases and you got the $1.40½ price?

A. That is right.

Q. Mr. Coyne, on pages 2380 and 2381 of the record you described your duties in connection with your position with the Morton Salt Company. Do the auditing and the statistical departments come under your supervision?

A. The auditing department would not.

Q. All other accounting departments would? The bookkeeping departments?

A. Accounts receivable.

Q. Accounts receivable. Accounts payable?

A. No.

Q. That comes under the treasurer's office?

A. Under the accountant.

Q. Who in your company is in charge of the so-called country billing?

A. I am.

Q. And are you also in charge of the city billing?

A. I am, the supervision of it.

Q. Over the entire country?

2750 A. As far as their invoicing procedures are concerned, yes.

Q. You testified on page 2388 of the record that a typical order for Morton Salt Company would be checked by the credit department. Do you mean to say that all orders received by the Morton Salt Company are checked by the credit department?

A. All orders would pass through the credit department.

Q. Well, do all orders pass through the credit department?

A. Sure, yes.

Q. Then all orders for round package Blue Label salt or other types of salt pass through the credit department?

A. Yes.

Q. And are checked by that department, is that correct?

A. Some of them are just spot checked occasionally.

Q. What do you mean by that, sir?

A. I mean by that that certain types of customers, that they absolutely have definite knowledge of them, of the corporation in itself, the credit risk involved, from doing business with them probably daily and they know what their credit rating is. For that reason the only time they would look them up is to see occasionally whether or not in the payment of their bills they omitted an invoice, or some such thing as that.

Q. You say that is done sporadically?

A. Insofar as certain types of customers are concerned, yes.

2751 Q. How often is that done?

A. Probably it might run every 60 days, or so. It would be in and out, no set time. It would depend on what they wanted to do.

Q. All other orders of customers coming through other than the ones checked on a spot occasion are checked as the orders come through in the credit department?

A. That is right.

Q. You say that is right, sir?

A. That is right.

Q. Is the loading foreman the same as the shipping foreman?

A. You could call him by either name.

Q. It is one and the same person, then?

A. So far as the checking is concerned.

Q. Will you explain the difference in the procedure followed in the invoicing or billing between the associate offices, in the Kansas City office, the Dallas, and San Francisco office, and the Chicago office?

Mr. McBride: May I have that question read back?

(The question above referred to was read by the reporter.)

Trial Examiner Purcell: Proceed.

A. The routines are the same.

By Mr. Haslett:

Q. What do you mean by, "The routines are the same"?

2752 A. They are all set up in the same manner. There isn't any particular difference in them. They all use the same types of forms, the same types of order blanks; orders are received, checked, and acknowledged and invoiced.

Q. All in the identical manner?

A. With the exception of the local billing for some of the associated offices in their own metropolitan area, where it moves promptly from their warehouse, or some such thing as that.

Q. How is that done, sir?

A. It would be about the same, other than that you don't have any carloads moving out like in their particular set-up.

Q. They have no carloads moving from the warehouse? It is all on a less-than-carload basis that they are billing?

A. It is mostly picked up right at the warehouse.

Q. Is the tabulating department under your supervision?

A. Yes.

Q. What type of employees are employed in the tabulating department? Are they bookkeepers, clerks?

A. Generally trained by the tabulating people.

Q. I believe you stated that the machines used in that department are rented from some concern?

A. International Business Machines Corporation.

Q. And the employees in that department are trained by the firm owning the machines?

2753 A. Well, it is up to us to hire people that have that training if we can possibly get them. It is very good that they attend their school.

Q. Are there any certified public accountants in that department, in the tabulating department?

A. It is not necessary.

Trial Examiner Purcell: Please answer the question, Mr. Coyne. Confine yourself to an answer to the question. Read the question.

(The question above referred to was read by the reporter.)

A. To the best of my knowledge, there is not.

By Mr. Haslett:

Q. Are there any certified public accountants employed by the Morton Salt Company?

A. There probably is.

Q. Do you know of your own knowledge whether there are any certified public accountants employed by your company?

A. I have never asked them that question.

Q. You don't know whether there are any there or not, do you, sir?

A. No, I wouldn't say that I do.

Q. Mr. Coyne, you referred to a sales analysis on page 2393 of the record. What did you mean by that, sir?

Mr. McBride: If the Examiner please, I think
2754 perhaps Mr. Coyne should be shown that page, to see what he meant by it, in connection with his testimony at that point.

Mr. Haslett: Yes.

(Handing transcript to witness.)

Trial Examiner Purcell: Let the record show that the transcript of testimony was tendered the witness by the attorney for the Commission.

The Witness: May I have the question read?

(The question above referred to was read by the reporter.)

A. I mean that they would prepare such records as are necessary from our copies of the invoices.

By Mr. Haslett:

Q. Who prepares it, sir?

A. The tabulating department.

Q. And that, of course, is under your supervision?

A. That is right.

Q. What is the purpose of it, sir?

A. Detailed analysis of our sales.

Q. What do you use it for?

A. Determining various types and packages of salt going into the various territories.

Q. Do you use it to determine the types and packages of salt going into the various territories?

A. Yes.

2755 Q. And it is prepared from the sales records of the tabulating department?

A. It is prepared from the invoices by the tabulating department.

Q. The invoices would be a part of the sales records?

A. The invoices are part of our normal routine records.

Q. You stated that the Morton Salt Company pays the freight on the Blue Can salt whether the sale price is $1.50 or $1.60 per case. Isn't it a fact that the freight is included in the sales price?

A. It is a blanket priced item. The freight is allowed.

Q. The freight is included in the sales price, isn't it, sir?

A. The freight would be allowed from the delivered price. It is a delivered price, the $1.50 or the $1.60. We could either prepay the freight or we could ship it freight collect, and when they would remit they would deduct the amount of the freight that they had paid.

Q. The customer is paying the freight, in any event, is that correct, sir?

A. In the $1.50 price it is a delivered price.

2756 Q. Would you have the same price of $1.50 at the plant?

A. It would be $1.50 at the plant.

Q. It would also be $1.50 2,000 miles from the plant, is that correct?

A. Anywhere within the United States.

Q. Mr. Coyne, getting back to our $1.40½ cent figure, will you tell us in a little more detail how you arrived at the average figure for so-called net return after freight, and before any allowances for returns or discounts or competitive adjustments were made?

A. All the invoices were tabulated by our tabulating department.

Q. Now, is that all invoices for all offices in the United States?

A. It covers the offices of Chicago, and the associated offices which we are talking about in this case.

Q. I see, sir. It doesn't include Dallas, Kansas City, or San Francisco?

A. It doesn't.

Q. Why weren't they included, sir?

A. Because those particular branches were not being examined.

Q. When you say examined, what do you mean, examined by the Morton Salt Company, or the Federal Trade Commission?

A. I mean for the purpose of this case, the Chicago

2757 and associated offices were taken as the base for that period.

Q. And that was arrived at by the Morton Salt Company?

A. Well, I wouldn't know that.

Q. Who selected the area?

A. Our executive officers.

Q. Did you have anything to do with it at all, sir?

A. At that particular time, I was in the discussion.

Q. Well, why wasn't the Dallas, San Francisco, and Kansas City offices included?

A. We thought Chicago would be a representative figure.

Q. How did you know it would be a representative figure?

A. Because of the territory covered by the Chicago office.

Q. Who made that decision?

A. I don't recall that.

Q. You don't know how it was arrived at?

A. Insofar as the territory that we examined?

Q. That is right, sir.

A. We figured that that particular territory covered the biggest part of our operations, so why not take that.

Q. Well, why take that? That is what I wanted to find out, sir. Was it just an arbitrary decision?

A. It would give you a better picture of the whole situation.

Q. Did you make any survey to determine that, sir?

A. No, we just picked that one out.

2758 Q. Just picked it out arbitrarily?

A. I really don't know.

Q. Don't you think it possible that a smaller area would have been representative?

A. I couldn't answer the question.

Q. You don't know, then, why they selected Chicago and its so-called associated offices?

A. None, other than that it covered the biggest part of our territory.

Q. And you don't know why the San Francisco, Kansas City and Dallas offices were not included in the compilation which resulted in this figure of $1.40½ cents, is that right, sir?

A. Read the question, please.

(The question above referred to was read by the Reporter.)

The Witness: As long as we were working on that particular territory, that is what we drew it off from.

By Mr. Haslett:

Q. And you don't know why you selected that territory?

A. No, I don't really know.

Q. Did you take into consideration in arriving at the figure of $1.40½ cents any discounts or allowances granted by the Morton Salt Company to its various customers?

A. No.

2759 Q. You just took into consideration freight?

A. That is right.

Q. And that is the only figure that you took into consideration?

A. Net sales after freight.

Q. You didn't take into consideration the carload discount?

A. We are taking into consideration the list price of the Blue Package salt, whether it be at $1.50, in carloads, or $1.60 l.c.l., and the freight is off of that.

Q. So that the carload discount was taken into consideration in arriving at that figure, wasn't it, sir?

A. May I have the question, please?

(The question above referred to was read by the Reporter.)

The Witness: There is no carload discount involved in the Blue Can.

By Mr. Haslett:

Q. There is no carload discount involved in the Blue Can?

A. No.

Q. They have a straight carload figure, is that correct, sir?

A. The price is $1.50 net delivered.

Q. What is the $1.60 figure?

A. Net delivered.

Q. Less than carload?

2760 A. $1.60 is your list price delivered.

Q. And what is the $1.50, sir?

A. Your list price delivered.

Q. So you have two prices for the Blue Can salt, is that correct?

A. For the l.c.l. and carload?

Q. Yes.

A. Yes.

Q. I see, sir. I want to make myself very clear, Mr. Coyne. I don't want to confuse you in any way, sir.

A. Thank you.

Q. All I am trying to do is just to find out how you

arrive at that $1.40½ figure, what was taken into consideration.

Now, you state that you don't have any carload price on the Blue Can salt, and yet the $1.60 price is a less than carload price, and the $1.50 price is the carload price, isn't that correct, sir? So both of those figures were taken into consideration at the time you arrived at the $1.40½ price, isn't that correct, sir?

A. If there was any salt invoiced, any l.c.l. shipments in that period that we examined, they were taken into consideration at the list price, less freight.

Mr. Haslett: Is that clear to the Examiner?

Trial Examiner Purcell: Yes and no. I don't
2761 care to enlarge upon it at this moment. Perhaps you can develop it a little further, if possible.

By Mr. Haslett:

Q. Now, Mr. Coyne, correct me if I am not right in making the statement that I am about to make, that the $1.50 price on the Blue Can Salt is to customers who purchase on a carload basis, or on a pool car basis, and the $1.60 price is to customers who purchase on less than a carload basis, and that these two figures were taken into consideration in arriving at the so-called net value of $1.40½?

A. They were both taken into consideration in arriving at the $1.40½ price, net return.

Trial Examiner Purcell: Mr. Coyne, is counsel's statement correct. He asked you to correct him if he was in error. Is the statement as he made it in the question correct, and if it is not, wherein is it not correct.

Mr. Haslett: Would you like the statement read to you, Mr. Coyne?

The Witness: Very much.

Mr. Haslett: Will you please read the question, Miss Reporter?

(The question above referred to was read by the Reporter.)

The Witness: That statement is correct.

2762 By Mr. Haslett:

Q. Does the Morton Salt Company, Mr. Coyne, have many customers receiving both allowances, that is, the quantity allowance of 10 cents or 15 cents per case on

the Blue Can salt, and also a unit discount on the same products?

A. No.

Q. You say they do not?

A. That is right, they do not.

Q. Do they have some?

A. There is no such thing.

Q. There is no such thing. A. & P. gets the 15 cents per case allowance on the Blue Can salt?

A. Yes.

Q. And they get a one unit discount on all other grades of table salt?

A. Yes.

Q. But does the unit discount apply to the Blue Can salt?

A. Only the 15 cents.

Q. Only the 15 cents?

A. That is the quantity discount. There is no unit on the Blue Can.

Q. The unit is only on other grades of table salt, is that correct, sir?

A. That is correct.

Q. But the dollar value of the Blue Can, the dollar
2763 value of the Blue Can is included in that figure of $50,000 on which the unit discount is granted and allowed, is that correct, sir?

A. May I have that question read?

(The question above referred to was read by the Reporter.)

The Witness: Yes.

Trial Examiner Purcell: Let the record show at the moment, please, that perhaps the occasion for misunderstanding some of counsel's questions, and having to have them re-read is because of the traffic, and the street car noises coming into the room.

By Mr. Haslett:

Q. Mr. Coyne, will you give me the date that the Morton Salt Company decided to put this figure of $1.40¼ as the average net return on the Blue Can salt?

That question isn't so difficult, Mr. Coyne. All I wanted to know is the date at which you arrived at that figure.

A. It was the date during the period of tabulating the figures that we arrived at it.

Q. And when was the period that you were tabulating those figures, between what dates?

A. Sometime in 1940.

Q. Sometime in 1940?

2764 A. Yes.

Q. Subsequent to the issuance of this complaint?

A. After we had received the complaint.

Q. I see. Who decided, Mr. Coyne, that you weren't going to take into consideration, in arriving at the figure of $1.40½ cents, allowances for returns, discounts, and so-called competitive adjustments?

A. All of the figures that we arrived at during this examination were without these various allowances, and that was the reason we just drew off our total value of the Blue Can after freight, and divided it by the number of containers for that particular period, to see what the average net return was.

Mr. Haslett: Now, I will ask the Reporter to read the question, and ask the Examiner to strike the answer as being non-responsive to my question.

(The question above referred to was read by the Reporter.)

Trial Examiner Purcell: The motion to strike is granted on the ground that the answer is not responsive to the question.

Now, Mr. Witness, you may answer counsel's question.

The Witness: Mr. Peterkin wanted to know.

By Mr. Haslett:

2765 Q. Is that your answer, sir?

A. That is my answer.

Q. Let us see if we can get at it in another way.

Why wasn't the so-called allowances for returns, discounts, and so-called competitive adjustments taken into consideration by the Morton Salt Company in arriving at the figure of the $1.40½ for the average net return after freight?

A. We were trying to determine what our average net return was after freight direct from our regular ordinary tabulations of those products.

Q. Why weren't the other items taken into consideration, of the various discounts and competitive adjustments allowed?

A. They weren't taken into consideration in any of the tabulations.

Q. Tell me why they weren't, Mr. Coyne?

A. They are not incorporated in our invoices.

Q. Well, a net return would be after all discounts and allowances are taken off, wouldn't it, sir?

A. Not so far as our invoices are concerned.

Q. What I would like to know, Mr. Coyne, if you can possibly tell me, who it was in your organization that decided that these various allowances weren't to be taken into consideration in arriving at that figure?

A. Our executives, when we started the tabulations for this period, decided to take them on our average
2766 invoicing procedures, take the information directly from our invoices.

Q. Then am I to understand that Mr. Peterkin, and other executives of your firm, decided not to take the others into consideration?

A. No.

Trial Examiner Purcell: You mean counsel is not to understand that?

The Witness: That is right.

Trial Examiner Purcell: He is not to understand that.

The Witness: He is not to understand that.

By Mr. Haslett:

Q. Well, who decided?

A. Our executives decided that we would tabulate in that manner from our invoicing, normal invoicing operations.

Q. Then, Mr. Coyne, the only thing that was taken into consideration in arriving at the $1.40½ figure was freight?

A. Yes.

Q. And that would be the freight on the $1.50 shipment, and also the freight on the $1.60 shipment?

A. Yes.

Q. In preparing the various exhibits, Mr. Coyne, that have been introduced by the Respondent, were all those exhibits predicated on the Chicago and associated offices?

Mr. McBride: If the Examiner please, just a
2767 technical objection? A number of exhibits offered by Respondent were not introduced by, or through Mr. Coyne, and he testified not at all as to some of them. If counsel will confine his questions to such of the exhibits

as he means to be applied to this witness, I will withdraw the objection.

Trial Examiner Purcell: I am sure counsel will recognize the validity of the objection, and reframe the question. Do you wish an off the record discussion?

Mr. Haslett: Yes.

Trial Examiner Purcell: Off the record.

(Discussion off the record.)

Trial Examiner Purcell: On the record.

Mr. Haslett, proceed.

By Mr. Haslett:

Q. Mr. Coyne, I hand you Respondent's Exhibit No. 6, and ask you to state whether or not the figures that appear thereon represent the number of customers being served from all offices of the Morton Salt Company?

A. No, that represents Chicago office billings.

Q. Chicago office billings alone?

A. Exclusive of city billings from the associated offices.

Q. Exclusive?

A. Yes.

Q. Of city billings of the associated offices?

A. That is correct.

2768 Q. So the only office that would be taken into consideration in arriving at the figures appearing on Respondent's Exhibit No. 6 would be the Chicago City billings only, is that correct, sir?

A. Chicago country billings.

Q. Chicago country billings only?

A. Yes.

Q. Why weren't the city billings taken into consideration?

A. We tried to pick a representative figure, and this covered the biggest portion of our billings.

Q. Who do you mean when we say we?

A. Myself, and the executives, in determining what we should take.

Q. And it was determined by the executives of your department just what billings would be taken into consideration?

A. It was determined more on my judgment as to what would be a representative portion of the billings to take, and I decided on this particular grouping.

Q. What do you base that judgment on, sir?

A. My knowledge of the handling of these various accounts.

Q. Have you ever made any survey?

A. This particular one would cover, I would say, 75 to 80 per cent of the period examined.

Mr. Haslett: Mr. Examiner, I will have to move to strike the answer, and repeat it.

2769 By Mr. Haslett:

Q. Have you ever made a survey on which you could base that judgment?

A. Not an actual survey.

Mr. Haslett: May the former answer be stricken?

Trial Examiner Purcell: The former answer is stricken.

By Mr. Haslett:

Q. You didn't take into consideration, in preparing Respondent's Exhibit No. 6, the Dallas, Kansas City or San Francisco offices?

A. I did not.

Q. Nor did you take into consideration the Milwaukee, Minneapolis or New Orleans offices, or Detroit offices?

A. Their country sales, yes.

Q. I see, but not their city sales?

A. Not their metropolitan city sales.

Q. Why wasn't the Dallas and Kansas City, and San Francisco offices taken into consideration?

A. Because they are not taken into consideration in any of the figures.

Q. Well, why weren't they taken into consideration? Is that the only reason that they weren't taken into consideration, because you didn't want to include them in any of your figures?

2770 A. No, because we figured that the Chicago would be a representative figure.

Q. Who figured that?

A. Our executives.

Q. I hand you Respondent's Exhibit No. 7-A, and ask you to state what offices were taken into consideration in preparing that document?

Mr. McBride: If the Examiner please, I think I am entitled to an objection, if counsel is going to go through each of those exhibits, as to what billings were taken into

consideration. Mr. Coyne has already testified, and the record shows that, and the most that counsel can accomplish by trying to find out what billings were taken into consideration is a repetition of what is already in the record.

I am not at all objecting to the line of questioning as to why there were certain exclusions, and all the rest. I am simply, for the purpose of preventing an entire duplication in the record, which will result from this line of questions as to the scope of the billings allowed, objecting as to that being pursued.

Trial Examiner Purcell: Do I understand you are registering no objection?

Mr. McBride: I am objecting to the questions insofar as they are confined to the scope of billings involved.

2771 That is already clearly on the record at length.

Trial Examiner Purcell: It may be clear according to your light, sir, but on cross examination the attorney for the Commission has a right to clear up any deficiencies that might occur to his mind. If a great deal of the record is used up in that connection, why, it is too bad, but counsel is entitled to pursue his cross examination.

Mr. McBride: One further comment. As I recall, Mr. Examiner, on the particular issue to which counsel is turning now, there was a stipulation as to the identity of the scope of the billings.

Now, I am not trying to use the stipulation improperly. It is simply as a matter of preservation of the record, and as to all other questions regarding the exhibits. I am not lodging an objection.

Mr. Haslett: Mr. Examiner, in answer to Mr. McBride's statement that the stipulation covers the various documents, it is true I stipulated as to the identity of the documents, not as to what the document here purports to contain.

Trial Examiner Purcell: I understand, Mr. Haslett, and I have ruled on the matter, and no further argument is necessary. I understand your position thoroughly, sir. You may proceed.

Read the question, Miss Reporter.

2772 (The question above referred to was read by the Reporter.)

The Witness: The New Orleans office.

By Mr. Haslett:

Q. The New Orleans office only?

A. It just covers the city of New Orleans.

Q. Was it the New Orleans office only, sir?

A. Of the Morton Salt Company, yes.

Q. I see, sir. Is that also true as to Respondent's Exhibit 7-B?

A. It is.

Q. And is that also true as to Respondent's Exhibit 8-A?

A. Yes.

Q. And the same is true as to 8-B?

A. Yes.

Q. The New Orleans office was the only office taken into consideration in preparing Respondent's Exhibit No. 9-A?

A. No.

Q. What other office was taken into consideration in preparing that exhibit, sir?

A. Chicago.

Q. Why was the Chicago office taken into consideration in preparing that exhibit?

A. It covers billings for the State of Louisiana, exclusive of the city of New Orleans.

2773 Q. Billings outside of the City of New Orleans are handled through the Chicago office?

A. Yes.

Q. And they are not handled through the New Orleans office?

A. The orders would originate through the New Orleans office, but the billings would be handled by the Chicago office.

Q. I see, sir. Would your answer be the same as to Respondent's Exhibit 9-B?

A. 9-B, it would be the same.

Q. The billings would be out of the Chicago office, is that correct, sir?

A. For the State of Louisiana, yes.

Q. And the invoicing would be out of the New Orleans office, is that correct?

A. The invoicing would be out of the Chicago office.

Q. What would come out of the New Orleans office?

A. The invoicing instructions, the order.

Q. The invoicing instructions. Now, would the billing

for the office at Dallas, Texas, come out of the Chicago office?

A. No.

Q. Where would that come out of, sir?

A. The Dallas office.

Q. No billing for the Dallas, Texas office is done in Chicago?

2774 A. None at all.

Q. How about Kansas City?

A. None.

Q. And how about San Francisco?

A. None.

Q. No billing or invoicing is done in Chicago?

A. No.

Q. Any records kept in Chicago?

A. We have copies of the records, yes.

Q. You have copies of the invoices?

A. Yes, sir.

Trial Examiner Purcell: We will have a five minute recess.

(A short recess was taken.)

Trial Examiner Purcell: Recess is over. You may proceed.

By Mr. Haslett:

Q. Mr. Coyne, I hand you now Respondent's Exhibit No. 9-E, and ask you what offices were taken into consideration, billing offices of the Morton Salt Company were taken into consideration in arriving at the figures that appear thereon?

A. Chicago and New Orleans offices.

Q. No other offices?

A. No other offices.

Q. Why weren't other offices taken into consideration?

2775 A. Because other offices do not invoice in this territory.

Q. The figures that appear thereon represent the purchases of concerns that purchase through other offices, don't they, sir?

A. Some concerns purchase through other offices, but not in this territory.

Q. But the purchases of the other offices are not in-

cluded in the figures that appear on Respondent's Exhibit No. 9-E, is that correct?

A. They are not.

Q. I will hand you Respondent's Exhibit No. 10-A, and ask you to state what offices of the Morton Salt Company were taken into consideration in the preparation of that document?

A. Chicago, and the New Orleans office.

Q. Will you tell me the reason why other offices weren't taken into consideration in the preparation of that document?

A. Because the other offices do not invoice shipments in that territory.

Q. I hand you now Respondent's Exhibit 10-B, and ask you if your answer to the previous question applies to that document?

A. It would be the Chicago office.

Q. Only?

A. Chicago office only.

Q. Why wasn't the New Orleans office taken into 2776 consideration?

A. Well, they don't bill outside of the City of New Orleans. They would be interested only in so far as the order is concerned, in forwarding to the Chicago office.

Trial Examiner Purcell: You say they. Whom do you mean by they?

The Witness: New Orleans.

By Mr. Haslett:

Q. And the Chicago billings were the only billings taken into consideration in the preparation of that document, is that correct, sir?

A. Yes.

Q. You are looking now at Respondent's Exhibit 10-C. what offices were taken into consideration in the preparation of that document?

A. Billings from the Chicago office.

Q. And why wasn't the New Orleans office taken into consideration?

A. They do not render billings to these customers outside of the city of New Orleans.

Q. Is that true as to Respondent's Exhibit D?

A. Yes.

Q. I am now handing you Respondent's Exhibit No.

10-E, and ask you to state what billing office was taken into consideration in the preparation of that document?

2777 (Handing document to the witness.)

A. Chicago and New Orleans.

Q. Why was the New Orleans office taken into consideration?

A. To reflect the Great Atlantic and Pacific Tea Company's purchases in the State of Louisiana.

Q. Does the New Orleans office handle all A. & P. purchases for the State of Louisiana?

A. They are all invoiced—all their purchases are made through their New Orleans warehouse, so our New Orleans office would invoice for those shipments.

Q. And the Chicago office was also taken into consideration in the preparation of that document?

A. Yes.

Q. Was there any separation of the invoicing of both offices on Respondent's Exhibit 10-E?

2778 A. We examined both billings.

Q. The document doesn't show New Orleans billings and Chicago billings, does it, sir?

A. Yes.

Q. 10-E?

A. No, it is included in that figure.

Q. Now, Mr. Coyne, would your answers in regard to the Georgia and Florida territory, as represented by Respondent's Exhibit 11-A, B, and C, be the same as the answers that you gave in regard to the New Orleans and the State of Louisiana territory?

A. No.

Q. They would not. I hand you Respondent's Exhibit 11-A and ask you to state what office was taken into consideration in the preparation of that document.

A. Billings are handled entirely through the Chicago office.

Q. Entirely through the Chicago office?

A. Yes.

Q. Where do the orders originate, through what office?

A. Nashville office.

Q. Was the Nashville office taken into consideration at all, sir, in the preparation of that document?

A. They render no billings in the Nashville office whatever.

Q. What is the Nashville office?

A. The sales office that handles the orders. They
2779 receive the orders and forward them to Chicago.

Q. And Chicago does the billing for all customers served from the Nashville office?

A. That is correct.

Q. I hand you Respondent's Exhibit 12-A, B, and C, and ask you to state what offices are taken into consideration in the preparation of that document.

A. Chicago office billings.

Q. Did the Nashville office of the Morton Salt Company handle the sales for the various customers whose names appear thereon?

A. The orders would be tendered to us through our Nashville office.

Q. And would your answer be the same as to Respondent's Exhibit 13-A?

A. Only with respect to the billings.

Q. Only with respect to billings?

A. Yes.

Q. Will you amplify that answer a little bit and tell us what the other part of the document would refer to?

A. The orders would be received through our Washington office.

Q. Through your Washington, D. C., office?

A. Yes.

Q. Do you do any billing from the Washington,
2780 D. C., office?

A. No billing from the Washington office.

Q. That is a sales office also?

A. Yes.

Q. I show you Respondent's Exhibit 13-B through E and ask you to state what offices were taken into consideration in the preparation of those documents.

A. Chicago and Washington.

Q. Chicago and Washington?

A. Yes.

Q. Chicago billing office and Washington sales office?

A. That is correct.

Q. There is no billing done in Washington?

A. None.

Q. And that is Washington, D. C.?

A. Yes.

Q. Will you please refer to Respondent's Exhibit 14-A and I will ask you to state what offices were taken into consideration in the preparation of that document?

A. Chicago, insofar as billings are concerned, and Washington on the orders.

Q. Is that true as to14-B, C, and D?

A. It is.

Q. Will you look at Respondent's Exhibit 15-A and B and tell from what office the billings originated that
2781 were used to formulate that document?

A. Billings from the Chicago office.

Q. Will you look at Respondent's Exhibit 16 and tell me where the billings originated that were used to compile the figures that appear thereon?

A. Chicago office.

Q. Why wasn't some other billing office of the Morton Salt Company used?

A. Because all the billings are out of the Chicago office.

Q. Mr. Coyne, I am handing you Respondent's Exhibit 17 and ask you to state what office the billings originated from that were used to compile the figures that appear thereon.

A. Billings from the Chicago office.

Q. Why weren't the billings of other offices used?

A. Because the l.c.l. shipments are all from this particular billing territory.

Q. Don't you have any l.c.l. shipments from Dallas, Kansas City, and San Francisco?

A. Those offices are not included in this.

Q. Why aren't they included, sir?

A. We figure Chicago is representative.

Q. Who figured that, sir?

A. It was determined in the same manner as the other schedules, by our executives.

Q. I see. The executives of your company decided
2782 that Chicago was representative?

A. Yes.

Q. And they used those figures?

A. Yes.

Q. Do you know what they based that decision upon,

A. Probably their knowledge of the salt business.

Q. It wasn't brought about by any survey of the company's business in all territories, was it, sir?

A. I could hardly answer that question.

Q. You testified it was decided upon by the company. How did you know it was decided upon by the company or the executives of your company?

A. Because I prepared it. That is where I received my direction in working on these particular things, these particular schedules.

Q. You were instructed to prepare that document by the executives of your company?

A. In our discussion of this particular case, yes.

Q. And were you in on the discussions regarding the factors that entered into the decisions that brought about the document?

A. To pick a representative—

Trial Examiner Purcell: (interposing) Read the question.

(The question referred to was read by the reporter.)

2783 A. Yes,

By Mr. Haslett:

Q. And what was taken into consideration in arriving at the decision that the Chicago and its associated offices would be used as a factor in the preparation of this document?

A. The fact that this would be a representative portion.

Q. Wasn't it just a guess, Mr. Coyne, on the part of the executives of the company as to the Chicago offices and its associated offices being representative?

Mr. McBride: If the Examiner please, I will object to that question. I don't think this witness can be interrogated as to whether the executives were guessing. It is within counsel's power to examine the executives and find out whether they were guessing.

Mr. Haslett: He testified he was in on the discussions.

Mr. McBride: I take it that my observation is still correct. I think the objection to the question is pertinent.

Trial Examiner Purcell: Objection overruled. He was present at the discussion and he may be interrogated upon everything that took place there. If they decided to toss up a coin, or what not, and if that is the way they arrived at the decision, that is a fact and he can testify to that.

If he doesn't know, he can testify to that with equal

2784 facility.

You may answer.

The Witness: May I have the question read?

(The question above referred to was read by the reporter.)

A. It was in their best judgment.

By Mr. Haslett:

Q. And their best judgment was based upon what, sir?

A. Their knowledge of the salt business.

Q. It wasn't based upon any general detailed survey of of the various plants or offices of the Morton Salt Company, was it, sir?

A. I really don't know just exactly as to what knowledge Mr. Peterkin might have as to surveys or anything of the kind.

Q. Do you know of any survey ever being made of the other three offices, the Kansas City, the Dallas, and the San Francisco offices?

A. Not to my knowledge.

Q. Mr. Coyne, I hand you Respondent's Exhibit No. 18 and ask you what billing offices were taken into consideration in the preparation of that document, sir.

A. The Chicago and what associated offices might do billing to any of those particular customers.

Q. Do you know what associated offices might do 2785 billing to those particular customers?

A. Yes.

Q. What are they, sir?

A. Milwaukee and St. Louis.

Q. They are the only two?

A. To the best of my knowledge, that is the only two.

Q. Do the figures that appear on that document represent country sales or city sales?

A. They represent both.

Q. They represent the combined sales from Chicago and what associated offices were used, is that correct, sir?

A. That is correct.

Mr. Haslett: May I see the document, please, Mr. Coyne?

The Witness: Yes.

By Mr. Haslett:

Q. Does the Kroger Grocery & Baking Company make any purchases from the Morton Salt Company from any other of its billing offices than the Chicago, St. Louis, and Milwaukee offices?

A. Did you say Kroger?
Q. Yes, sir.
A. May I see it, please?
Q. Yes.
A. I believe there is another billing out of one of
2786 the other offices included in that.
Q. What is that office, sir?
A. I believe it is St. Louis.
Q. St. Louis office?
A. Yes.
Q. Would the Kansas City office billings be included in that document?
A. They would not.
Q. Do you know of your own knowledge whether or not any billings for the Kroger Grocery & Baking Company have been made from the Kansas City office?
A. That is possible.
Q. It is possible?
A. Yes.
Q. Do you know whether or not some have been made, sir?
A. I would like to examine our records.
Q. Would it be a great deal of difficulty for you to find out that for us, sir?
A. No, it wouldn't.
Q. Do you know whether any billings for the purchases of Kroger Grocery and Baking Company have been made through the San Francisco office?
A. No, there isn't any Kroger in the San Francisco office.
Q. How about the Dallas office?
A. It is possible.
2787 Q. Would you also add that to your list, sir, and find that out for us?
A. All right.
Q. Now, I call your particular attention to the figures appearing opposite Creasey Corporation on Respondent's Exhibit No. 18. Were all the billings that are represented thereon made out of the Chicago office or one of its associates?
A. They are all from the Chicago office.
Q. Does the Creasey Corporation make purchases that are billed by the Morton Salt Company from any other of its offices other than the Chicago office?

A. I am quite sure that the Creasey operate only in the territory covered by the Chicago or its associated offices.

Q. Is that also true of C. D. Kenny Company?

A. That is true of the C. D. Kenny Company.

Q. How about N. R. O. G.?

A. No, N. R. O. G. would operate in other parts.

Q. I see. And there would be billings out of other offices?

A. Yes, there would be.

Q. Would there be billings out of the Dallas office?

A. I don't think so.

Q. How about the Kansas City office?

A. There would be.

2788 Q. And the San Francisco office also?

A. Well, I know they operate on the Pacific Coast, but whether we have any of their business out there I wouldn't say offhand.

Q. Why wasn't the Kansas City office included in the billing figures that appear thereon?

A. Because they weren't included in the scope of this particular exhibit.

Q. It all goes back to the same question, that it was a decision of the executives of the company that just the Chicago and associated offices would be used as the basis for the preparation of this document?

A. Yes.

Q. And your answers would probably be the same to the various questions as to this customer as they were to other customers?

Mr. McBride: You mean exhibits?

By Mr. Haslett:

Q. And exhibits?

Trial Examiner Purcell: Let us get your question straight.

Mr. Haslett: It is straight, sir.

Trial Examiner Purcell: All right; if you are satisfied, I am.

By Mr. Haslett:

2789 Q. Is that correct, sir?

A. Customer?

Q. We will substitute the word "exhibits" for "customers."

A. Yes.

Mr. Haslett: It would be the same. I am trying to shorten the record a little bit, Mr. Coyne. I don't want to keep propounding the same questions to you.

2790 ARNOLD J. COYNE, resumed the stand and testified further as follows:

Cross Examination by Mr. Haslett (continued).

Q. Mr. Coyne, I again refer you to Respondent's Exhibit 18 and ask you to state whether the figures opposite the name National Tea Company represent the purchases, the entire purchases of the National Tea Company from all offices of the Morton Salt Company.

A. That would represent their purchases from the Chicago and any through the associated offices.

Q. Well, do you know whether any purchases were made through the associated offices?

A. Yes.

Q. Which offices?

A. In this instance it would be Milwaukee, the Milwaukee office.

Q. The Milwaukee office?

2791 A. Yes.

Q. Now, does the National Tea Company purchase any of its requirements of Morton Salt through the Dallas, San Francisco, or Kansas City offices?

A. No, they do not.

Q. They do not, sir; just through the Chicago and its associated offices?

A. Yes.

Q. Again referring you to Respondent's Exhibit 18, I ask you to state whether or not the discounts shown in the last column on that document, whether that discount is predicated upon the so-called net value of the Blue Can salt and other types of salt after the allowance for freight.

A. You are referring now to the Blue Can?

Q. Blue Can and other types of salt.

A. It would be to other types of table salt but not the Blue Can.

Q. It would be other types of table salt but not the Blue Can?

A. That is correct.

Q. What is the discount on the Blue Can predicated upon?

A. The number of containers purchased.

Q. The number of containers purchased?

A. Yes.

Q. Well, is the value of those cases based upon the
2792 $1.40½ figure or the $1.50 figure?

A. It is based on the $1.50 figure after freight.

Q. After freight?

A. Yes, sir.

Q. For the clarity of the record, would you explain, please, just how the discount figure for Creasey Corporation was arrived at?

A. 10 cents multiplied by the number of containers of Blue Can shown in the first column of figures and 5 percent of the value shown in the third column of figures.

Q. Now, when you say "containers", do you mean just the package of salt or do you mean a carton of salt?

A. I mean a carton of salt, 24 packages in a carton.

Q. And it is 10 cents off of each package?

A. Off of each carton.

Q. I see, sir. And what is the price of the carton on which the discount is predicated?

A. $1.50, less freight.

Q. Less freight?

A. Yes.

Q. That would be $1.40½, approximately?

A. The figure here, this value would be the delivered price less the freight.

Q. I see. And when you say "here," what do you mean?

A. In this Exhibit No. 18.

2793 Q. And what column are you referring to?

A. The value shown in the second column of figures.

Q. I see, sir. And the third column of figures would represent the value of the other types of table salt?

A. Yes, it would.

2794 Q. After freight?

A. Yes.

Q. And it is approximately 5 per cent, which, carried forward, is the discount, is that correct, sir?

A. You mean the make up of this discount?

Q. That is right.

A. Shown in the last column of figures?

Q. That is right, sir.

A. That would include the 10 cents per case, and the 5 per cent of Column 3 figure.

Q. Mr. Coyne, I show you Respondent's Exhibit 19, and ask you to state whether or not the figures appearing thereon are based solely upon the invoices from the Chicago office and its associated offices?

A. The Chicago and its associated offices.

Q. Do any of the customers' names that appear on that document purchase Morton Salt through the Kansas City, Dallas, or San Francisco offices.

A. They do purchase from Dallas, Kansas City, or San Francisco offices. They are not included.

Q. Why aren't they included in that, sir?

A. Because those offices weren't examined for this tabulation.

Q. Why weren't they examined?

A. The offices that we used for this examination 2795 were decided upon as I previously explained.

Q. The decision being made by the executives of your Company?

A. That is correct.

Q. When was that decision made?

A. Shortly after the complaint was received.

Q. Why was it made?

A. Because they figured this would be representative territory.

Q. Who figured it?

A. Our executives.

Q. Were you in at the meeting where that decision was arrived at?

A. Yes.

Q. Will you tell us what was said at that meeting?

A. Not very well. That is a year and a half ago, or more.

Q. Do you know who had the final say in regard to the decision?

A. Our president, I believe.

Q. Mr. Peterkin?

A. Yes.

Q. I believe you stated it was based upon the knowledge of the salt business?

A. Yes.

Q. Of the Morton Salt business?

2796 A. Yes.

Q. It wasn't as a result of any survey at all?

A. Not that I know of.

Q. Mr. Coyne, I show you Respondent's Exhibit No. 20-A and B, and ask you to state whether the figures that appear thereon are the result of billings out of the Chicago offices, and its associated offices?

(Handing document to the witness.)

A. The Chicago and its associated offices.

Q. No other offices were taken into consideration in the preparation of this document?

A. No others.

Q. Where is Thieman Bros. located, if you know, sir?

A. I believe they are in Cincinnati.

Q. Thieman Bros. didn't purchase 5,000 cases of Morton's Free Running and Iodized salt during any twelve consecutive month period, did they, sir?

A. Not during this period.

Q. Why are they on that list?

A. They are on that list because of the period that was examined. They may have been qualifying in any twelve consecutive month period. These purchases represented here may not be the twelve month qualifying period there.

Q. I see. So that the cases of Blue Can, the figures appearing under that column don't truly reflect the

2797 heading of the document, that is, 5,000 case discount customers for the period September 1st, 1939, to August 31st, 1940, is that true, sir?

A. The figures are well represented for this particular period. They may have started qualifying, Mr. Haslett, later, but they were qualifying in between these periods. They may only have a few months of their purchases on this schedule.

Q. Can you state of your own knowledge that Thieman Bros. purchased 5,000 cases of Morton's Free Running salt during the twelve consecutive month period covered by that document?

A. If I had their qualifying date, I could tell you.

Q. You don't have that date?

A. No, I don't.

Q. And therefore, you can't tell, can you?

A. From what is right here, I can't tell you. I can't tell without an examination of our records at the office.

Q. Would the same be true as to H. Rom & Sons?

A. That would be true.

Q. You don't know whether they are a 5,000 case purchaser or not, do you, sir?

A. Yes, I do.

Q. How do you know that, sir,

A. Because in the schedule, if we had included
2798 them, it definitely indicates that they were qualifying.

Q. The schedule doesn't show that they purchased 5,000 cases, does it, sir?

A. The figures on this schedule do not, but again I repeat, that they may have been qualifying from some point during this period, for a twelve month period, and this necessarily would not represent a twelve month period for each individual customer.

Q. Well, the document represents a twelve month period, though, doesn't it, sir?

A. That is true.

Q. What is M. Rom & Sons Company, if you know, sir?

A. A wholesale grocer in Pittsburgh.

Q. Does he operate any branches?

A. I wouldn't know without checking records.

Q. Then am I to understand, Mr. Coyne, that the document known as Respondent's Exhibit No. 20-A and B does not show the exact purchases of the various customers whose names appear thereon; that there are additional purchases which do not appear thereon?

A. Not during that particular period.

Q. Then going back to Mr. Thieman, during the period of September 1st, 1939, to August 31st, 1940, Mr. Thieman purchased 3755 cases of Blue Can salt, is that correct, sir?

A. He purchased in some months of that particular
2799 period, yes.

Q. My question is to the period of September 1st, 1939 to August 31, 1940, Mr. Thieman purchased 3755 cases of Blue Can salt, is that correct?

A. That is correct, but he may have started in September or July of 1940.

Q. But during that period he purchased only that amount?

A. During that period, yes.

Q. That is what I am trying to find out. The same is true as to M. Rom & Sons?

A. Yes.

Q. During the twelve months period beginning September 1st, 1939, and ending August 31st, 1940, M. Rom & Sons purchased 4750 cases of Blue Can, of Morton's Blue Can salt?

A. But it may not be their qualifying twelve month period.

Q. That isn't the question.

Mr. Haslett: Miss Reporter, will you read the question back, please?

(The question above referred to was read by the Reporter.)

The Witness: That is the number of cases that they purchased during that particular period, but it may not be their qualifying period.

By Mr. Haslett:

Q. Do you know what the qualifying period is?

2800 A. Not without referring to the records, not without referring to our records.

Q. What do you mean by qualifying period

A. The twelve month period in which they signified their intention of qualifying for the 5,000 case discount.

Q. Doesn't this document represent a twelve months period?

A. It does.

Q. So they would have to qualify during that twelve months that is shown on this document, is that correct?

A. They would have to have qualified—those customers were paid on qualifications accumulated during the period, but it may not cover the entire period of their twelve months.

Q. I see, Then this document doesn't reflect the purchases of Thieman Bros. for the twelve consecutive month period, does it, sir?

A. For that twelve consecutive month period shown on the schedule?

Q. Yes.

A. It does reflect any purchases that they made during that twelve consecutive month period.

Q. Then during the twelve consecutive month period, as shown in this document, that is, from December 1st,

Q. 1929 to August 31st, 1940, Thieman Bros, did not purchase 5,000 cases of Morton's Blue Can salt, did they?

A. Not in that particular period.

2801 Q. The same is true as to M. Rom & Sons?

A. Yes.

Q. And all those customers who show less than 5,000 cases that appear on this document?

A. Yes. It may not be the twelve months in which they were qualified.

Q. But during the twelve consecutive month period that is shown on this document, they purchased that amount, is that correct, sir?

A. Any purchases that they made during the period shown on that document are reflected on that document.

Q. And during the period of September 1st, 1939, to August 31st, 1940, the ones, other than showing 5,000 cases, did not purchase that much during that entire period, did they, sir?

A. They did not, because it may not be their qualifying period.

Q. I am not talking about the qualifying period now, I am talking about the document itself, Mr. Coyne, and I ask you just to answer my questions, sir, without bringing in the qualifying period.

Mr. McBride: Mr. Examiner, I suppose I can lodge an objection to repetition here. It has been covered, recovered and re-re-covered. It is precisely what this instrument shows. I don't think counsel is entitled to
2802 load the record further with repetitions of his own questions which are getting the same answers time after time. I am not objecting to the purpose of the question, I am objecting to the repetitiousness of the question.

Mr. Haslett: My answer to that is that if Mr. Coyne would answer my questions and leave it at that without going ahead and making an explanation in connection therewith, that he keeps wanting to make, I don't think we would have this much repetition. All I want to know is the answer to the question that I asked.

Trial Examiner Purcell: We have had enough argument on the record. Objection overruled.

By Mr. Haslett:

Q. Mr. Coyne, just answer my question, sir, and I think we can go on to something else.

I refer you again, now, Mr. Coyne, to Thieman Bros., the first name appearing on Respondent's Exhibit 20-A and ask you to state whether or not Thieman Bros. purchased 5,000 cases of Morton's Blue Can salt during the twelve consecutive month period beginning September 1st, 1939 to August 31st, 1940?

A. They did not.

Q. And would your answer be the same as to M. Ron & Sons?

A. It would.

Q. And would it be the same as to The Herman

2803 McLean Company?

A. Yes.

Q. And it would be the same to all of those customers whose names appear thereon, which shows opposite their names in the column headed "cases of Blue Can salt" where it is less than 5,000 cases?

A. Yes.

Q. I believe you stated, Mr. Coyne, that this document did not represent the billings of the Dallas, Kansas City, or San Francisco offices?

A. That is right.

Q. And if I ask you the reason for that, you would give me the same answers that you gave to my previous questions, is that right, sir?

A. I would.

Q. Does the Morton Salt Company grant to many of its customers who purchase less than 5,000 cases of salt a discount of 10 cents per case?

Mr. McBride: May I have that question, please?

(The question above referred to was read by the Reporter.)

The Witness: They do not grant a 10 cent per case discount to any customers which do not qualify for the 5,000 cases.

2804 By Mr. Haslett:

Q. Then the figures that appear on Respondent's Exhibit 20-A under the heading "Cases of Blue Can" do not reflect the total purchases of customers whose names appear thereon?

Mr. McBride: If the Examiner please, I must object again. Now, we have been over this, and in addition to it the question says that it doesn't reflect the total purchases. Total purchases when? I can't abide this constant repetition of it, and then a final wind up of a wide open question of total purchases. Nobody has testified to any purchase of anything before or after this period.

In fact, the contrary appears of record.

Mr. Haslett: I will modify my question.

By Mr. Haslett:

Q. The figures do not reflect the total purchases of the customers whose names appear on this document during the period beginning September 1st, 1939, and ending August 31st, 1940.

Mr. McBride: I renew my objection to repetitiousness. That is the third time that question has been asked in one form or another.

Trial Examiner Purcell: Off the record.

(Discussion off the record.)

Trial Examiner Purcell: On the record.

2805 The objection will be sustained on the grounds stated.

Proceed, Mr. Haslett.

By Mr. Haslett:

Q. Mr. Coyne, am I correct when I state that Respondent's Exhibit 20-A and B show the names of all of Morton Salt Company's customers billed out of Chicago and associated offices, who purchased the Blue Can salt, together with the number of invoices issued during the period of that document, that is, from September 1st, 1939 to August 31st, 1940, and the number of cases of Blue Can salt purchased during that period, together with the total net sales value after freight, and the discounts granted and allowed, that these customers whose names appear thereon have qualified during some twelve consecutive month period as discount customers purchasing 5,000 cases or more of Morton's Blue Can salt during a particular twelve consecutive month period, all or a portion of which qualification period or periods fall within the twelve months period covered by this exhibit, and that is the reason why the names are on this document?

A. Yes.

Q. Were the metropolitan areas taken into consideration in preparing the various exhibits that we have gone over this morning?

Mr. McBride: If the Examiner please, that is a
2806 broadside question with respect to a number of varying types of Exhibits. I will have to object, because it isn't susceptible to an answer, as counsel will have observed from the fact of his questions this morning, as to each individual exhibit, and, consequently, the witness was interrogated specifically as to what was covered with respect to each exhibit.

Mr. Haslett: Off the record.

Trial Examiner Purcell: Off the record.

(Discussion off the record.)

Trial Examiner Purcell: On the record.

The objection is sustained for the reasons stated by counsel.

By Mr. Haslett:

Q. Mr. Coyne, I hand you now Respondent's Exhibit No. 6, and ask you to state why the period of January 1st, 1941 to December 31st, 1941 was used for the preparation of that document?

A. Picked out a calendar year basis.

Q. Who picked that out?

A. I did.

Q. Why did you pick that year?

A. No particular reason, just picked any one at random.

Q. You picked any one at random?

A. That is right.

2807 Q. You just happened to pick that year,

A. Well, I figured a year so I could examine a full year.

Q. I see. You say there is no particular reason for it, Mr. Coyne, did I understand you to say that?

A. No particular reason.

Q. Why is it that you wanted to use a calendar year?

A. No particular reason.

Q. Why didn't you use the period September 1st, 1939 to August 31st, 1940?

A. All of my records are right at my finger tips for that particular period. You see, in filing, you can't keep several years of them in the general office. Those were available right there.

Q. Where were the documents that were used to prepare the exhibits for the period September 1st, 1939 to August 31st, 1940? Weren't they available?

A. Yes, but I believe some of them have been sent back to our warehouse in Chicago. You see, it is down at Elston Avenue, and we can't keep so many of them cluttering up the floor, which we had to do to work on that previous period.

Q. Mr. Coyne, you have over there the transcript of the record. Will you look at page 2422?

A. It is not in here.

2808 Q. Now you have page 2422 of the transcript of the record in the case before you?

A. Yes, I have.

Q. You will note there Mr. McBride asked you the question, "Now, were the entire country billings of the Chicago office examined for that entire period?"

Do you see that question, sir?

A. Yes.

Q. You answered, "They were." Did you mean by that answer that the use of the words "entire country" meant the entire United States?

A. No, I meant the Chicago country billings.

Q. In the preparation of Respondent's Exhibit 6 you used only country billings, is that correct?

A. Chicago country billings.

Q. I see. Why is it that you used only the country billings? Why didn't you use the metropolitan billings?

A. They were typical.

Q. Just typical. What do you base that opinion upon?

A. On my knowledge of our billings.

Q. Did you ever make a survey of them?

A. I have been looking at them for 15 or 20 years.

Q. Will you explain in a little more detail what you mean by the phrase, "They were typical"?

A. They were representative.

2809 Q. Representative of what?

A. Of the general run of our billings?

Q. General run of your country billings?

A. Of all billings.

Q. Of all billings. But you didn't use, in the preparation of Respondent's Exhibit 6, metropolitan billings, did you, sir?

A. The Chicago country billings would handle or would cover—

Trial Examiner Purcell: (Interposing) I suggest for clarity you answer counsel's question first, which is the regular way of doing it. Then, if you care to make an explanation, the opportunity will be accorded you.

Now read the question.

(The question above referred to was read by the reporter.)

By Mr. Haslett:

Q. Can you answer that, sir?

A. It is difficult to answer.

Q. Can you answer the question, Mr. Coyne?

A. There would be metropolitan areas included.

Q. You say there would be?

A. Surely.

Q. May I see the document, please?

(Witness hands document to counsel.)

2810 Q. Does the heading on the document truly reflect the matters taken into consideration in the compilation of the document, where it says "exclusive of city sales billings"?

A. It is exclusive of city sales billings from Chicago or associated offices, but it does not necessarily mean that there would not be metropolitan areas of other large cities that are not included in there. If they were in the Chicago country billings, they would be reflected in there.

Q. Oh, I see. Then in the billings out of the associated offices, why, it would include both country and city billings, is that correct, sir?

Mr. McBride: I don't believe I heard the question.

Trial Examiner Purcell: Read it.

(The question above referred to was read by the reporter.)

A. It would include their metropolitan area.

By Mr. Haslett:

Q. Everything out of Chicago, then, would be country billing?

A. Chicago city might mean some suburban towns round Chicago.

Q. But the various offices that are associated with the Chicago office are considered country billing offices?

A. City billing offices.

2811 Q. City billing offices. Did you include the associated offices in the preparation of Respondent's Exhibit 6?

A. No.

Q. Just the Chicago office alone?

A. Chicago country billings.

Q. Why weren't the Minneapolis, Detroit, Milwaukee, St. Louis, and New Orleans offices included in the compilation of Respondent's Exhibit 6?

A. No particular reason other than that the Chicago country billings would cover, probably, better than 75 percent of the sales.

Q. What would be the other 25 percent?

A. Your associated offices.

Q. The other associated offices?

A. Yes.

Q. What other associated offices do you have?

A. Those that have been mentioned in the record, Milwaukee, Detroit, Minneapolis, New Orleans, St. Louis.

Q. I just mentioned those. I said Minneapolis, Detroit, Milwaukee, St. Louis, and New Orleans. Have you any other associated offices?

A. None.

Q. They are the only ones you have?

A. The only associated billing offices, yes.

Q. In order that the record may be clear, repeat-

2812 ing my original question to you, why weren't these associated offices included in the compilation of this document?

Trial Examiner Purcell: Meaning Respondent's Exhibit?

By Mr. Haslett:

Q. Respondent's Exhibit 6.

A. Because we felt that that would be a representative figure.

Q. Who felt it?

A. I felt it.

Q. What did you base that feeling upon, sir?

A. My work in connection with the invoicing procedures.

Q. Just picked at random, wasn't it?

A. It was a big pick.

Q. I agree with you, sir. It was not based on any survey at all?

A. My survey.

Q. When did you make the survey?

A. My general knowledge. No actual survey other than my running through them and their tabulations and compiling the other figures.

Q. You have under the "Classification by cases purchased", on Respondent's Exhibit 6, 1 to 500, and the number of customers in that class, 3,643 customers. How did you arrive at that figure, sir, of 3,643?

2813 A. Actual tabulations.

Q. Of what?

A. Our records.

Q. What records?

A. Our sales records.

Q. What do they consist of?

A. Tabulated from invoices.

Q. Everything based upon invoices?

A. Yes.

Q. That represents an actual count from the sales books of the Morton Salt Company, is that correct, sir?

A. The Morton Salt Company's records.

Q. The same is true as to the customers in the next classification of 501 to 1,000, being 199 customers?

A. Yes.

Q. That would be true as to all of the figures appearing under the second column on that exhibit?

A. Yes.

Q. Does the Respondent's Exhibit 6 represent all customers that are purchasing the Blue Package salt from the Morton Salt Company that are billed out of the Chicago office?

A. It does.

Q. You haven't any other customers that are billed out of the Chicago office that are not included in this list?

A. All that are in our Chicago country billings
2814 are included.

Q. Of course, there are a number of customers on the city billings that are not included, isn't that correct, sir?

A. That is correct.

Q. And there are a number of customers in the associated offices that are not included in this document?

A. Yes.

Q. I refer you now to Respondent's Exhibit 7-A, which I have handed you, Mr. Coyne, and call your particular attention to the first name appearing under "Discount Retailers", the A. & P. Tea Company, who are receiving 15 cents as a rebate or discount from your company by reason of the fact that they purchased 50,000 cases of Morton's free running salt during a twelve consecutive month's period.

The figure shown under 1937 does not represent the entire purchases of the A. & P. Tea Company, does it, sir?

A. Only for their New Orleans warehouse.

Q. I see. The same would be true as to the figures under 1938, 1939, 1940, and 1941?

A. Yes.

Q. I call your attention to the next name appearing thereon, H. G. Hill Stores, Inc., receiving a rebate of 10 cents per case. Does the figure appearing under 1937 represent the entire purchase of H. G. Hill Stores, Inc., for that year?

A. It represents their purchases for the city of New Orleans.

Q. Does it purchase from any other place?

A. I believe they do.

Q. What do you base that belief upon? Do you know whether they do or not, sir?

Trial Examiner Purcell: Ask him one question at a time, please, Mr. Haslett. Do you wish to withdraw your other question?

Mr. Haslett: Yes, sir.

By Mr. Haslett:

Q. Do you know whether they purchase through any other office?

A. Through any other offices?

Q. Yes, sir, of the Morton Salt Company.

A. I am quite positive they are billed through the Chicago office for other purchases.

Q. Do you know where H. G. Hill Stores' principal office is located, sir?

A. Not offhand.

Q. This document does not purport to show the entire purchases of H. G. Hill Stores, Inc., does it, sir?

A. It does not.

Q. I refer you to Capitol Stores of New Orleans, the next name that appears under "Discount Retailers", receiving a 7½ cent discount under 1938. Does that represent the entire purchases of Capitol Stores for that particular period?

2816 Mr. McBride: If the Examiner please, for the same reason that Mr. Haslett objected, and which I attempted to clear up by a statement with respect to my use of the words "qualification", "competitive adjustments", and so forth, I wish to object to his use of the words "rebate", for example, and now to the use of the word "discount" in lieu of "competitive adjustment", as I have used it, regarding Capitol Stores, unless Mr. Haslett likewise is willing to indicate that he does it without prejudice to the claims of either side.

Trial Examiner Purcell: Is counsel willing to so stipulate?

Mr. Haslett: Yes, but not as to the word "rebate", because I feel that the word "rebate" is a proper description of what this 10 cents and 15 cents is. I will as to the word "discount". I meant to say "competitive adjustment" there.

Mr. McBride: Then all I am asking of counsel—I didn't object perhaps, as I should have at the time, Mr. Examiner—I don't know what the connotations of the word "rebate" are, but I only wish to avoid the possibility of counsel's using it for a self-serving purpose.

Trial Examiner Purcell: I take it, Mr. McBride, that if Mr. Haslett used the word "black" concerning a thing that was white, the mere fact of his use of that word
2817 would not change the quality of the object discussed. Your objection will be overruled, sir.

Mr. McBride: Mr. Examiner, I am asking nothing more than Mr. Haslett asked of me with respect to my use of the words of various types to which I have referred. To be sure, as the Examiner says, Mr. Haslett cannot change black into white by so stating. I think in order to avoid constant objection on my part that I am entitled to the same courtesies from counsel. Otherwise I shall see fit to object to all questions containing words where I think there may be either a legal or factual implication involved in his use of them.

Trial Examiner Purcell: Mr. McBride, the Examiner merely had an objection before him on which he had to

rule. If counsel is not willing to extend to you the same courtesies which you say you extended to him, that is a matter over which the Examiner has no jurisdiction. I apprehend that you two gentlemen will get together on some common ground, as you always have in the past in these hearings. We will now take a five minute recess for you gentlemen to discuss it.

(A short recess was taken.)

Trial Examiner Purcell: Let the record show our recess is over, please.

Mr. Haslett: Mr. Examiner, I would like for the record to show that I have no secret or subtle meaning to the
2818 words "rebate" or "discount". I mean by the word "rebate" the amount of money that the Morton Salt Company pays to their various customers when they have presumably qualified for such rebate, and it is not used as any legal connotation or conclusion.

Mr. McBride: Then, Mr. Examiner, I will withdraw my objection.

Mr. Haslett: Of course the use of the word "qualified" does not mean that I am admitting anything against the interests of the Commission.

Mr. McBride: Mr. Examiner, in the face of that statement I will withdraw my objection to counsel's use of the word "rebate".

Trial Examiner Purcell: I compliment counsel. Let the record so show.

Mr. Haslett: Will you read my last question, Miss Reporter, please?

(The question above referred to was read by the Reporter.)

Mr. Haslett: Make that read "so-called competitive adjustment" instead of "discount". Now, read the question.

(The question above referred to was read by the Reporter as follows:

"Question: I refer you to Capitol Stores of New
2819 Orleans, the next name that appears under 'discount retailers', receiving a 7½ cent so-called competitive adjustment under 1938. Does that represent the entire purchases of Capitol Stores for that particular period?")

The Witness: Only for the city of New Orleans.

By Mr. Haslett:

Q. Only for the city of New Orleans. Does Capitol Stores operate units in other cities within the State of Louisiana?

A. Yes.

Q. Would that be also true as to the years 1939, 1940 and 1941?

A. It would.

Q. May I refer you to the next name appearing under the column "Discount retailers", being "United Cash Grocery Company," showing a 7½ cent so-called competitive adjustment. Does the figure appearing under 1937 represent the entire purchases of that Company for the year 1937?

A. It represents their purchases of Blue Can for the City of New Orleans.

Q. Do they operate in other cities of the State of Louisiana, if you know, sir?

A. If they operate anywhere else they would be shown in the other schedules.

Q. When you say "the other schedules" what do 2820 you mean, sir?

A. The other exhibits.

Q. I refer you to Respondent's Exhibit 9-A and ask you to state whether or not the name "United Cash Groceries" appears under "Discount retailers" on that exhibit?

A. The name does not appear on this exhibit.

Q. So that they would only be operating within the city of New Orleans, is that correct, sir?

A. Could I see the exhibit showing the consolidated companies?

A. Yes.

(Handing document to the witness.)

Trial Examiner Purcell: Having reference now, Mr. Witness, to what exhibit?

The Witness: 9-B. They appear on schedule 9-B, United Cash Grocery, in Algiers, Louisiana.

By Mr. Haslett:

Q. Do they appear in any other city on that exhibit?

A. That is the only place.

Q. So that the only places that United Cash Grocery would be operating is in New Orleans and Algiers, Louisiana, is that correct?

A. That is correct.

2822 Room 111, Sherman Hotel,
Chicago, Illinois,
Monday, October 19, 1942.

Met, pursuant to adjournment, at 10 a. m.

Before:

James A. Purcell, Trial Examiner.

Appearances:

John T. Haslett, Esq., Attorney for the Federal Trade Commission.

L. M. McBride, Esq., 310 South Michigan Avenue, Chicago, Illinois, attorney for Respondent.

2823 ARNOLD J. COYNE, a witness called for the Respondent, having been previously duly sworn, resumed the stand and testified as follows:

Cross Examination by Mr. Haslett (Continued).

Q. Mr. Coyne, you stated that your company allows Capitol Stores, Inc., of New Orleans, a so-called competitive adjustment of 7½ cents per case on the round Blue Can salt, which is paid to them through the Consolidated Companies, Inc.

Was there any other processor of salt selling the Blue Can to Capitol Stores at $1.42½ per case, prior to the time Morton Salt Company reduced the price, or gave the so-called competitive adjustment?

2824 Mr. McBride: Will you read the last part of that question, please?

(The record as above referred to was read by the Reporter.)

The Witness: No one else sells Blue Package.

By Mr. Haslett:

Q. So there wasn't any other processor selling the Blue Package, then?

A. Not the Morton's Blue Package.

Q. Well, any Blue Package?

A. That I wouldn't know.

Q. Was there any other processor of salt selling round package table salt comparable in quality and size to Morton's Blue Can salt to the Capitol Stores, or Consolidated Companies, Inc., at $1.42½ per case?

Mr. McBride: If the Examiner please, I will object to these questions to this witness. He qualifies as the office manager of the Morton Salt Company, and not as the sales manager. He has only testified that the competitive adjustment was paid.

The circumstances under which it was paid were testified to by Mr. Stratford, who has already been available for cross examination by Mr. Haslett, regarding this testimony.

Mr. Haslett: Mr. Examiner, I think counsel's own
2825 statement precludes any objection, stating that he testified to the competitive adjustment. It is part of the exhibit, and I am entitled to go into it, and find out when it was made, and why it was made.

Trial Examiner Purcell: Objection overruled. If the witness knows, he may testify.

Mr. McBride: Mr. Examiner, if I may make my final statement before the ruling is final. This witness stated only that this competitive adjustment was made. The purpose, the circumstances, and all the rest regarding this same competitive adjustment were testified to by the sales manager of the Morton Salt Company. I take it that counsel is out of order in directing the cause and circumstances questions to this witness, because he has not qualified as the sales representative of the Morton Salt Company who knew the circumstances under which it was allowed.

Trial Examiner Purcell: He may have just as wide knowledge of the matter as the sales manager. The ruling stands.

Read the last question to the witness.

(The question above referred to was read by the Reporter.)

The Witness: My work does not involve sales practices.

Mr. Haslett: I move that the answer be stricken.
2826 Trial Examiner Purcell: The answer will be stricken, and the witness will answer the question of counsel if he can.

The Witness: Well, I am not familiar with the sales policies.

By Mr. Haslett:

Q. Mr. Coyne, I didn't ask you whether you were familiar with the sales policies, I asked you if any other processor of salt was selling a round package salt comparable in quality and price to Morton's salt, to the Capitol Stores, at $1.42½ per case?

A. I do not know.

Q. Then how did you arrive at the figure of $1.42½ per case competitive adjustment granted to the Capitol Stores, as shown on Respondent's Exhibit 8-A.

Mr. McBride: I object to that question. The exhibit doesn't show $1.42½ competitive adjustment.

Mr. Haslett: I meant to say Exhibit 7-A.

Trial Examiner Purcell: Let the record show that the exhibit he referred to is Respondent's Exhibit 7-A.

Mr. McBride: My objection still stands to that. It wasn't the exhibit identification to which I was objecting, Mr. Examiner, but, rather, the $1.42½.

Mr. Haslett: If counsel wants to be technical, I will withdraw the question.

2827 By Mr. Haslett:

Q. Mr. Coyne, how did you arrive at the figure of 7½ cents per case allowance to the Capitol Stores, as shown on Respondent's Exhibit No. 7-A?

A. Our sales Department advised me what the adjustment should be.

Q. Who advised you in that department, sir?

A. Mr. Stratford.

Q. You don't know of your own knowledge why that adjustment was made?

A. No, I do not.

Q. Do you know the prices of salt processed by other manufacturers?

A. No, I do not.

Q. Mr. Coyne, I show you Respondent's Exhibit 7-A, so that you can have it before you in your answer to this question.

You stated on the record in your direct examination that the New Orleans Branch of C. D. Kenny Company received an allowance from the Morton Salt Company of 10 cents per case, predicated upon the fact that C. D. Kenny Company purchased 5,000 cases of Morton's Blue Can salt during the twelve consecutive month period.

Will you please advise me if the New Orleans Branch of C. D. Kenny Company purchased 5,000 cases of
2828 Blue Can salt required by your Company to be eligible for the discount or rebate during any twelve consecutive month period?

A. The New Orleans branch did not purchase 5,000 cases.

Q. Will you state whether or not the Davis-Mize Company, prior to the time it was taken over by Witherspoon Brothers at the New Orleans Warehouse purchased 5,000 cases of Morton's round package Blue label salt?

A. The New Orleans branch did not purchase 5,000 cases.

Q. Was the fact that the Witherspoon Brothers purchased Davis-Mize Company in New Orleans the only reason why the 10 cent discount was stopped?

A. No.

Q. What were the other facts?

A. They did not qualify as a 5,000 case purchaser.

Q. Didn't they purchase just as much in New Orleans as Davis-Mize did, sir?

A. They purchased just as much as the Davis-Mize branch, yes.

Q. Even more?

A. It is a consolidation of two companies.

Q. I didn't ask you that, sir. I say, they purchased more, didn't they, sir?

A. Yes.

Q. Did the A. & P. Tea Company's New Orleans
2829 warehouses purchase 50,000 cases of Morton's Blue Can salt during any twelve consecutive month period?

A. Did you say the New Orleans branch?

Q. That is right, sir.

A. They did not purchase 50,000 cases.

Q. Did the Capitol Stores, Inc., purchase $50,000 worth of table salt from the Morton Salt Company during a twelve consecutive month period?

A. Their New Orleans unit did not.

Q. Did the Capitol Stores, Inc., purchase $50,000 worth of table salt from any processor of salt during the twelve consecutive month period, if you know, sir?

A. I do not know.

Q. Do you know why the unit discount was granted to the Capitol Stores, Inc., of New Orleans?

A. None other than it is a competitive adjustment.

Q. And the only reason you know it is a competitive adjustment is because somebody told you it was?

A. Our general sales manager advised me.

Q. He advised you of that?

A. Yes.

Q. Do you know why the unit discount was granted to United Cash Grocery, and Goodman and Beer Company?

A. I was advised to pay them the competitive adjustment.

Q. By your sales manager?

2830 A. That is right.

Q. And you don't know why it is paid?

A. No, none other than on their instructions.

Q. Their instructions didn't contain the reason?

A. That isn't necessary for me.

Q. How about Consolidated Companies, Inc., do you know why the unit discount was paid to Consolidated Companies, Inc.?

A. No.

Q. Do you know the name of any competitor that was allowing a unit discount to these companies?

Mr. McBride: If the Examiner please, I think it might be appropriate to renew my objection at this time. The witness' answers to counsel's own questions have, I think, again sufficiently disqualified him as to knowledge on the subject matter about which he is now being examined.

Mr. Haslett: I asked him if he knew. He can answer it yes or no.

Trial Examiner Purcell: You may answer.

Mr. McBride: Is my objection overruled?

Trial Examiner Purcell: Yes.

The Witness: I am not familiar with that.

By Mr. Haslett:

Q. What is the mathematical difference between the one unit discount, and the one unit competitive adjustment?

2831 A. There is no difference.

Q. It is the same thing, isn't it, sir?

A. Yes, sir.

Q. Mr. Coyne, will you refer to page 2469 of the record, and you will note on that page that you stated that the Capitol Stores, Inc., and United Cash Grocery were included under the classification of "Discount Retailers"

for comparison purposes. What do you mean by comparison purposes?

A. By that I mean that the two others under "Discount Retailers"—

Trial Examiner Purcell: Having reference to what?

By Mr. Haslett:

Q. What are you referring to, sir?

A. Well, Exhibit 8-A. It was shown there for comparative purposes, because of the A. & P. receiving the one unit.

Q. And there wasn't any difference between the A. & P. unit, and the Capitol Stores, and United Cash Grocery Company unit? One was called a discount, and one a competitive adjustment, is that correct, sir?

A. That is correct.

Q. And that was the only reason that they were put under that classification?

A. They are retailers.

Q. I mean, the only reason they were put under there was to compare them with A. & P.?

2832 A. They operate under the same plan, both selling to the consumer, and both receive either a discount or a competitive adjustment.

Q. Referring to Exhibit 8-A, will you state whether C. D. Kenny Company has purchased $50,000 worth of table salt during any twelve consecutive month period, as shown by that exhibit?

A. Again you mean in the city of New Orleans?

Q. That is right, sir.

A. They did not purchase $50,000 worth in the city of New Orleans.

Q. Mr. Coyne, I will ask you to refer to the second column of figures on Respondent's Exhibit 8-A, and you will note under "Other Non-Discount Wholesalers", which is the heading of the column, the name Max Bressler, Inc.?

A. Yes.

Q. And I think that is $4.00, isn't it, sir, or $4.50.

A. $4.50.

Q. And then the item above, Nicholas Camorate & Company, $4.00?

A. Yes.

Q. Do you know whether or not that represents one invoice, or a group of invoices?

A. Not without referring to my work papers.

Q. Would it be possible for you, during the
2833 luncheon period, to determine that for us, please, sir, and if there is one invoice, or two or three invoices, could you possibly make a duplicate copy of the invoices and bring them back with you after lunch?

Is that satisfactory, Mr. McBride?

Mr. McBride: I have no objection to the request, but I doubt the time element, because it is 1938. But we will endeavor to do it and get it started and bring it back just as promptly as we can, if they can check the pro records for that many years back.

By Mr. Haslett:

Q. Now, will you refer, Mr. Coyne, to the last column under 1941, and you will note there under "Non-Discount Wholesalers Who Testified for the Commission", Albert Mackie Company, 75 cents, the last column over. The first figure, 75 cents, does that represent one invoice, Mr. Coyne, if you know, sir?

A. It may be a portion of an invoice.

Q. You don't know whether it would represent one invoice or not. If that is all they purchased during that entire year, it wouldn't be a portion of an invoice, would it, sir?

A. It could be, because this schedule shows table salt other than Blue Can. They may have purchased some common salt.

Q. I see, sir. Could you determine that for us?
2834 A. I could.

Q. And also the first figure in the next set, one dollar, under Supreme Wholesale Grocery Company, rather, Supreme Wholesale Cash Grocery Company, under the heading "Other Non-Discounts Wholesalers".

A. For 1941?

Q. That is right, sir.

A. Yes.

Q. Is all salt sold to the A. & P. Tea Company for resale and distribution in the State of Louisiana delivered to that Company's warehouse at New Orleans?

A. Yes.

Q. And they haul it from the warehouse to the point of sale, is that correct, sir?

A. I don't know what their distribution would be.

Q. Morton Salt Company doesn't haul it?
A. No, they do not.
Q. Do you allow them any cartage?
A. No.
2835 Q. The salt that is purchased for Alexandria, Louisiana, goes to the New Orleans warehouse of the A. & P. Tea Company?
A. If it is in the State of Louisiana it goes to their New Orleans warehouse.
Mr. McBride: For the purposes of the record, I assume that these series of questions refer to purchases from the Morton Salt Company, although your questions have not been identified as such?
Mr. Haslett: That is right. That is what we are talking about, the Morton Salt Company.
Mr. McBride: You made an over-all, inclusive statement of purchases of salt.

By Mr. Haslett:

Q. How many other customers of the Morton Salt Company, no matter where located, receive a so-called competitive adjustment similar to that paid to the Capitol Stores, Inc., Consolidated Companies, Goodman & Beer, and United Cash Grocers?
A. There again I would have to refer to the records.
Q. Do you know if there are any other customers of Morton Salt Company receiving the 7½ cents per case competitive adjustment, so-called?
A. I know of no other receiving a 7½ cents per case adjustment.
Q. Are there other customers receiving other com-
2836 petitive adjustments?
A. There I would have to refer to our records on that.
Q. Could you determine for us the names and addresses of all customers of the Morton Salt Company who receive any adjustment whatsoever or allowances or discount other than the so-called quantity discount on the Blue Can salt?
A. That could be determined.
Q. Would you determine it for us, sir?
A. I will do my best.
Q. Thank you, sir. Are there any other customers of the Morton Salt Company that receive a unit discount or any part of a unit discount or multiple of the unit dis-

count as a so-called competitive adjustment on other types of table salt, other than the Consolidated Companies, Inc., Capitol Stores, Goodman & Beer, and United Cash Grocery Company, and I don't include the round package salt in that.

A. I would like to refer to our records on that.

Q. Would you refer to your records and advise us at some later date during the hearings here in Chicago whether or not there are other customers receiving such competitive adjustment?

A. I will do my best.

Q. Do you know, Mr. Coyne, of your own knowledge, and I only want you to testify as to what you know of your own knowledge, when the Capitol Stores, Inc., 2837 began to receive the so-called competitive adjustment of 7½ cents per case on the Blue Package salt?

A. Yes, I know.

Q. And what is that date, sir?

A. December of 1938.

Q. December of 1938?

A. Yes.

Trial Examiner Purcell: That shows in the note on 7-A, Respondent's Exhibit 7-A, at the bottom of the page.

Mr. Haslett: May we be off the record?

Trial Examiner Purcell: Off the record.

(Discussion off the record.)

Trial Examiner Purcell: On the record.

By Mr. Haslett:

Q. Mr. Coyne, I refer you to Respondent's Exhibit 9-D. Have you that before you, sir?

A. Yes.

Q. The Interstate Wholesale Groceries have branches at the various cities that are set out on that exhibit, is that correct, sir?

A. Yes.

Q. Do you know whether or not they are independently owned or part of the Interstate Wholesale Groceries Company?

Mr. McBride: If the Examiner please, I object to this question. I take it this witness can't have it within 2838 his knowledge to have the particular set-up of this company in mind.

Trial Examiner Purcell: He can answer if he knows.

A. I wouldn't know anything about their corporate set-up.

Mr. Haslett: I see, sir.

By Mr. Haslett:

Q. Do any of the companies whose names appear on Respondent's Exhibit 9-D, under the heading "Interstate Wholesale Groceries", receive any discounts or allowances from the Morton Salt Company upon the purchases of Morton's salt?

A. No quantity discounts.

Q. Do they receive any competitive adjustments?

A. No.

Q. They are similar in operation to the C. D. Kenny Company, if you know, sir?

A. I understand they are wholesale units.

Q. Referring now to Respondent's Exhibit 10-A, Mr. Coyne, do the figures appearing under the years 1937, 1938, 1939, 1940, and 1941 for Consolidated Companies, Inc., under "Discount Wholesalers", represent the combined purchases of Goodman & Beer, Capitol Stores, United Cash Grocery, and the Consolidated Companies, Inc.?

A. It would exclude their New Orleans purchases.

Q. But it would represent the combined pur-
2839 chases of all those companies outside of the city of New Orleans?

A. That is correct.

Q. That is, of all other grades of table salt other than the Blue Can, is that correct, sir?

A. Yes.

Q. Will you refer to the record, page 2495. You stated in substance, if I am correct, sir, on that page, that Table Supply Company is affiliated with the Winn & Lovett Company of Jacksonville, Florida. Do you know that as a fact, of your own knowledge?

A. From our records, it shows that they are an affiliate.

Q. Do you know whether Winn & Lovett Company owns Hagin-Peters Company at Jacksonville, Florida?

A. No.

Q. Do you know if there is any connection between the two companies?

A. According to our records, they purchased from them.

Q. Who do you mean when you say "them"?
A. They purchased from the Winn & Lovett Company.
Q. Hagin-Peters purchased from Winn & Lovett?
A. That is correct.
Q. Morton's Blue Can salt?
A. Yes.
Q. And other types of salt also?
A. Morton's Blue Can, yes.
2840 Q. But you don't know of your own knowledge whether there is any corporate connection between the two companies?
A. Not of my knowledge, no.
Q. They might be competitors, so far as you know, sir?
A. Could be.
Q. Do you know if there is any corporate connection between the Florida Wholesale Grocery Company and the Dade Cash & Carry Company?
I don't know whether the record will help you in any way, Mr. Coyne, but do you, of your own knowledge, know if there is any corporate connection between the Dade Cash & Carry Company and the Florida Wholesale Grocery Company?
A. I know that they purchase through them.
Q. They purchased through the Florida Wholesale Grocery Company?
A. Through the Florida Wholesale Grocery Company.
Q. And is that also true of National Brands, Inc.?
A. Yes.
Q. You don't know whether there is any corporate connection between the two?
A. No.
Q. Just that National Brands purchased its requirements of Morton Salt through the Florida Wholesale Grocery Company?
A. Yes.
Q. And they might be competitors, so far as you know?
2841 A. They might.
Q. Mr. Coyne, Respondent's Exhibit 12-A you have used as your base for figuring the percentage of business done in the various years as shown thereon as 1937.
Will you tell us the reason why that year was selected?

A. 1937 was the first year that we could pick up a detailed record on it, due to our filing arrangement. We don't keep these copies of the invoices more than five years prior to the current year.

Q. I see. And you wanted it for a five-year period?

A. I believe you wanted 1936, and 1937 was the first year we could definitely tabulate.

Q. Now, will you explain that? "I wanted"? I don't remember making any request for this type of information, sir.

A. Part of the information, as I understood it, would go back to 1937 or 1936, and we tried to cover that complete period.

Q. You mean that in the subpoena duces tecum directed by the Commission that it called for records from June, 1936, to the date of the complaint, is that what you have in mind, sir?

A. I have a vague recollection that you wanted to go back that far with it.

Q. That I wanted to go back?

2842 A. That was my understanding.

Q. And it was for that reason that you selected 1937 as the base?

A. We went back just as far as we could, and 1937 was the first complete year that we could pick up.

Q. Why is it that you didn't select 1938 or 1939 as your base?

A. 1937 being the first year of our tabulation, we assumed and used that as our basis for future purchases.

Q. And 1937 was the first year that the Morton Salt Company installed the tabulating machines?

A. No, no. Morton Salt Company had the tabulating machines for—

Trial Examiner Purcell: Have you finished your answer?

A. No. —for about eight years; we have had them for about eight years.

By Mr. Haslett:

Q. I am still a little confused, Mr. Coyne, and I want to be cleared up on it, if you can, sir. Why was the year 1937 used? Why did you select that year?

A. Because we had copies of the invoices for that particular year that we could start from.

Q. Didn't you have them for 1938?

A. Yes.

2843 Q. Did you have them for 1939?

A. Yes, and 1940 and 1941.

Q. Why didn't you use 1938, 1939, or 1940?

A. You usually have to start somewhere with the basis, and 1937, as long as that is where we started, we used that.

Q. So it gets back to the problem of just pitching up the coin again?

A. I wouldn't say so.

Q. It was just an arbitrary year that you used? You just picked 1937? There was no particular reason for it, sir, was there?

A. The particular reason was that that was the first year we had the complete record of our invoices and we used that year.

Q. You didn't keep the complete records for 1936?

A. No, we did not.

Q. If you had had it for 1932, complete records, you would have no doubt used 1932, is that correct, sir?

A. I don't believe so.

Q. Why?

A. I don't think it was necessary to go back that far.

Q. Why didn't you think it was necessary?

A. We went back as far as we could.

Q. You could have gone back to 1932 if you had the complete records, sir, couldn't you?

2844 A. If, yes.

Q. But you didn't have it?

A. We didn't have the records.

Q. So it was based entirely upon the fact that you had the complete records for 1937 and that was the reason you started in that year, is that correct, sir? The reason that you used that year as the base, is that correct?

A. That is the reason that we used that year as the base.

Q. And isn't it a fact, Mr. Coyne, that the only reason that the so-called competitive adjustment would be given on the Blue Can salt to any of Morton Salt Company's customers would be in order to grant that particular customer some special favor not given to other customers?

Mr. McBride: Mr. Examiner, I renew my objection. I don't know how long counsel is to be permitted to question

this witness on sales policies. He was never qualified as a salesman on direct. The direct went into nothing regarding purposes, motives, causes, or policies.

Counsel had ample opportunity to ask those questions of Mr. Peterkin and Mr. Stratford. He will have an opportunity again to ask the same questions of Mr. Peterkin this afternoon.

I object to strewing this record with repeated questions on sales policies with the witness who qualifies as a general office manager and who in his answers to counsel's
2845 own questions disqualified himself to answer those questions.

Trial Examiner Purcell: This, of course, is cross-examination, Mr. McBride, and I hardly concede that a witness on several occasions answering that he doesn't know would automatically disqualify him from testifying.

Counsel is entitled to explore into that realm on cross-examination, I take it. If the witness doesn't know, he may so testify. If he does know, then counsel for the Commission is entitled to elicit that information. The objection is overruled.

The Witness: Will you read the question?

(The question above referred to was read by the reporter.)

A. I do not know.

By Mr. Haslett:

Q. Mr. Coyne, will you state the arithmetical difference between the so-called competitive adjustment granted to Colonial Stores, Inc., of one unit, and the one unit discount granted to A. & P., Kroger Grocery & Baking Company, and Atlanta Quality Savings Stores?

A. There is no difference.

Q. Mr. Coyne, will you refer to page 2512 of the record and Respondent's Exhibit 13-A? You will note that you testified that Respondent's Exhibit 13-A shows all of Dixie Home Stores' direct purchases of Morton's Blue Can salt.

2846 Will you advise us in detail if there is any indirect method or channel of purchasing of Blue Can salt done by the Dixie Home Stores?

A. Others purchase their requirements through the Dixie Home Stores.

Q. But there is only one method in which Dixie Home

Stores purchase salt from Morton's Salt Company, and that is in the regular channel of business, of having salesmen solicit business, and the orders transmitted to the Chicago office, is that correct, sir?

A. That is correct.

Q. There is no other method of getting the Dixie Home Stores' business, is there, sir?

A. No.

Q. The same would be true as to Charles Moody Company of Charlotte, North Carolina?

A. The same would be true.

Q. Mr. Coyne, why do you regard October and December, February, April, June, and August as representative months with reference to quantity and nature of less-than-carload shipments?

A. Our various seasonable business.

Q. What do you mean by that, sir?

A. Well, it would cover the general l.c.l. shipments for the entire year very nicely.

2847 Q. What do you base that opinion on, sir?

A. My opinion of the l.c.l. movements of salt.

Q. Did you check the books and records to determine that, sir?

A. I didn't go back over the books for a period of years to determine that. I know that of my own knowledge.

Q. And that knowledge comes to you through your long years of association with the salt business?

A. Yes.

Q. Why didn't you pick the intervening months?

A. The months picked would be representative months.

Q. These months?

A. Yes.

Q. You made no survey to determine that, did you, sir?

A. Yes.

Q. When did you make the survey?

A. In my experience of handling the business daily. It was as good a survey as any.

Q. There was no actual survey made, was there, sir?

A. I consider that a survey.

Q. You mean it is just your general knowledge of the business?

A. I wouldn't want any better knowledge.

Q. You didn't pick out a number of invoices for each

of these months on the less-than-carload shipments
2848 to determine those months, did you, sir?

A. Merely flicking the page would show me the information.

Q. You didn't even flick the page, did you, sir?

A. Yes.

Q. When did you do that; sir?

A. When I was determining what would be the proper months to use.

Q. Mr. Coyne, will you refer to Commission's Exhibit 18? I believe you stated that that exhibit shows all customers. I believe you stated that that shows all customers of Morton's Salt Company who received the so-called quantity discount on the $50,000 purchases during the period from September 1, 1939, to August 31, 1940.

Does that include such customers in the area served from the Kansas City, Dallas, and San Francisco offices?

A. No, it wouldn't.

Q. Have you customers purchasing from those three offices who purchase in the quantity of $50,000 worth of table salt during a twelve consecutive months' period?

A. I wouldn't know without examining the records.

Q. Why didn't you take into consideration those three offices in the compilation of Respondent's Exhibit 18?

A. I figured Chicago and associated offices would be a representative period.

2849 Q. And if I propounded the same questions to you as to why you figured that, I would get probably the same answers as I got before, is that correct, sir?

A. That would be right.

Q. You haven't changed your mind in any way?

A. No.

Trial Examiner Purcell: Off the record.

(Discussion off the record.)

Trial Examiner Purcell: On the record.

Let us take a five-minute recess.

(A short recess was taken.)

Trial Examiner Purcell: Recess is over.

By Mr. Haslett:

Q. In order that the record may be doubly clear, Mr. Coyne, would you advise me just what discounts the National Tea Company gets and what competitive adjustments, if any, they get?

A. They receive 10 cents per case quantity discount on their purchases of Morton's Blue Package and a one-unit quantity discount on their purchases of other table salt.

Q. Do they purchase $50,000 worth of salt from the Morton Salt Company during a 12 consecutive months' period, table salt?

A. Yes, they do.

Q. They don't get any competitive adjustments.

A. None other than the 5 cents on the Blue Can 2850 which we have already testified to.

Q. I see. I just wanted to be sure about it. It is 10 cents per case on the Blue Package salt for the reason that they qualify as a 5,000-case purchaser; then they get a 5-cent unit discount on the Blue Package salt for a so-called competitive adjustment; and then a one-unit discount on $50,000 purchases of all other grades of table salt, is that correct, sir?

A. No.

Q. Will you make the correction?

A. They receive 5 cents competitive adjustment on their purchases of Blue Can.

Q. That is what I said, sir. I didn't say 5 percent; I said 5 cents.

A. I understood you to say a unit.

Q. 5 cents. It is just 5 cents, isn't it, sir?

A. 5 cents.

Q. You stated that in your opinion the Port Huron plant was typical of all the plants of the Morton Salt Company. What do you base that opinion upon?

A. On our records of shipment.

Q. Did you make the survey of the other plants?

A. It would be a detailed knowledge of the shipments moving from all plants.

Q. That was not the question, Mr. Coyne. Did you 2851 make an actual survey of the other plants to determine which plant would be typical?

A. Define the word "survey" for me.

Q. Well, did you make an actual breakdown of the invoices of the various plants and of the operation costs in the various plants associated with the Port Huron plant to determine whether or not the Port Huron plant was typical?

A. We made a general survey based on our knowledge of the shipments that moved from the various plants.

Q. Then the reason that you selected the Port Huron plant was based upon your knowledge of what went on in the other plants, is that correct, sir?

A. Yes.

Q. And it wasn't on any actual detailed survey of the operations of the other plants made for that particular purpose?

A. Not for that particular purpose.

Q. Mr. Coyne, referring you to Respondent's Exhibit No. 22, are the salaries listed thereon purported to cover all Morton's invoicing operations?

A. Yes.

Q. They cover the invoicing operations from all plants of the Morton Salt Company, is that correct, sir?

A. Those serving this particular territory that was examined.

2852 Q. Why wasn't the office floor space used in Milwaukee, Detroit, and Minneapolis included in the compilation of rent on Respondent's Exhibit 22?

A. Those were omitted because they were located in warehouses.

Q. Do you pay rent for the warehouse?

A. It is all included. They just occupy part of the space in that particular warehouse.

Q. Morton Salt Company pays rent for the warehouse, don't they, sir?

A. Either they pay rent or own the warehouse.

Q. You don't know whether they own it or pay rent for it?

A. It depends on which one you refer to.

Trial Examiner Purcell: Deal with the cities separately, if you see fit, Mr. Haslett.

By Mr. Haslett:

Q. Whether they paid rent for it or owned it, would it change the fact that the operating floor space, the operating office floor space is used in the warehouse?

A. No.

Q. And you didn't include any costs of those particular cities; Milwaukee, Detroit, and Minneapolis, in the compilation of the rent on Respondent's Exhibit 22?

A. No.

Q. And the only reason, if I am correct in this
2853 statement, that you didn't include it was the fact that they were in warehouses?

A. They were located in a part of our warehouse.

Q. How was the rent figure arrived at for the Chicago office?

A. The Chicago office, during a part of the period examined, we were located at 208 West Washington Street and occupied two floors there. That would be for the first four months, about the first quarter of that particular time, and then we moved to 310 South Michigan Avenue.

It was difficult for us to go back over there to the old location to take any kind of measurements of the floor space that we occupied and used for billing and invoicing operations. Therefore, that is why we determined to use the figure of 50 percent, because we occupied conservatively 50 percent of the space for those operations.

Q. And that was an estimated figure, I believe you testified to?

A. It was due to our moving back and forth.

Q. Mr. Coyne, I show you the record on page 2603 and refer you to the last line on that page and more particularly to the figure $119,422. Is that the cost for invoicing Morton's products?

A. It looks like a typographical error to me in the record.

Q. What should it be, sir?

2854 A. That would represent the number of invoices.

Q. I see, sir. Mr. Coyne, you stated on your direct examination that there was no additional expense in connection with invoicing operations, which is not included on Respondent's Exhibit No. 22. On what do you base such a statement, sir?

A. On our examination of our records.

Q. Examination of your records? How was that done, sir?

A. Taking into consideration all those involved in the invoicing operation.

Q. Was the office rent or the office space in the various warehouses taken into consideration?

A. They were left out probably for the fact that they were located in warehouses.

Q. It would still be a part of the invoicing costs, wouldn't it, sir?

A. It was such a small part of it that it would be difficult to segregate it.

Q. That was not my question. It would still be part of the invoicing cost, though, wouldn't it, sir?

A. It is all taken into our operations at the warehouse there, the floor space.

Q. Mr. Coyne, you are not answering my question. It would be a part of the invoicing cost, wouldn't it, sir?

Those people included are a part of our invoicing
2855 operation.

Q. I am talking about the floor space, or the rent for space that those people occupy in the office that are in the warehouses. Isn't that a part of the invoicing cost?

A. It is a part of the invoicing operations.

Q. And they were not included, were they, sir?

A. Not the rent.

Trial Examiner Purcell: Not what?

The Witness: The rent.

By Mr. Haslett:

Q. Nor was the floor space included, was it, sir, that they occupied?

A. No.

Q. Mr. Coyne, I am reading now from page 2609 of the record, a question propounded to you by Mr. McBride: "Are there any expenses involved in the invoicing operations of the Chicago office or any of its associated offices not reflected on Respondent's Exhibit No. 22?"

And you answered, "No."

In the light of your testimony and answers to my various questions regarding the floor space in the Minneapolis, Milwaukee, and Detroit offices, do you now want to change your testimony, sir?

A. I still feel that my answer is all right. I do
2856 admit that there is a part of the floor space occupied by those few individuals that is not included, but it is such a minor item that it wouldn't make much difference one way or the other.

Q. Now, on what do you predicate that answer, sir, such a minor item? How do you know it is a minor item?

2857 A. To try and segregate the space used by one or two people in a big warehouse?

Q. Those people were a part of the general functions

of the corporation? They were an important part, weren't they, sir?

A. It is quite true.

Q. Now, are there any credit operations done in the Milwaukee, Minneapolis, and Detroit offices?

A. Credit work is handled in Chicago.

Q. Do they have any credit work in those offices at all, sir?

A. Pertaining to certain types of accounts that they sell from day to day, but insofar as credit work is concerned, that is all done in Chicago.

Q. But there is some work done through customers that are daily purchasers in regard to the credit work, isn't that correct, sir?

A. They may place an order and be advised that their account is overdue on those that they handle in that particular office, as local billing.

Q. Was any of that taken into consideration in arriving at the figures under "Credit Operations" on Respondent's Exhibit No. 22?

A. Only the Chicago credit was taken into consideration, insofar as the individuals are concerned, but
2858 if there are any bad debts, or anything of that kind, they would be taken into consideration.

Q. So the credit operations in the other offices were not taken into consideration in arriving at the figures as shown on Respondent's Exhibit No. 22?

A. All those credit costs are in Chicago.

Q. But you do have some credit costs outside of Chicago, as you testified to, sir?

A. I consider that a part of their sales picture at that local branch.

Q. Why do you consider that, sir?

A. Because it is handled by the order clerk there.

Q. Well, isn't the clerk's time and expense taken into consideration in the passing on credit problems?

A. It is taken into consideration on his invoicing procedures.

Q. Not on the credit operations?

A. No.

Q. Why is that done, sir?

A. Because there is little if any credit involved at those branches.

Q. Whatever is involved wasn't taken into considera-

tion in compiling these figures, was it, sir, on Respondent's Exhibit No. 22?

A. The credit involved entirely rests with Chicago,
2859 because their orders all clear through Chicago, with the exception of small deliveries from the warehouse.

Mr. Haslett: Miss Reporter, will you read the last question, and I will ask you just to answer the question, Mr. Coyne, if you please, sir.

(The question above referred to was read by the Reporter.)

The Witness: I would say there is none involved.

By Mr. Haslett:

Q. You just testified that there was some involved, sir.

A. That is possible, due to the small orders involved. If there are any, they are not included.

Trial Examiner Purcell: Mr. Witness, counsel's question to you is very clear. Let us assume that there was one dollar of expense involved during the year. Counsel's question to you is, was that one dollar, even though it may appear to your mind to be insignificant, taken into consideration in arriving at the inclusions and the figures contained in this exhibit?

Is that correct, Mr. Haslett?

Mr. Haslett: That is right, sir.

Trial Examiner Purcell: Now, will you please answer that question.

The Witness: It would not be included.

2860 By Mr. Haslett:

Q. Mr. Coyne, was it your entire responsibility to prepare Respondent's Exhibits 17 to 24, inclusive?

A. They were prepared by me with certain of the figures furnished to me by our accounting department.

Trial Examiner Purcell: Read the question to the witness.

(The question above referred to was read by the Reporter.)

The Witness: Yes.

By Mr. Haslett:

Q. Were they prepared in accordance with your opinion as an accountant?

Mr. McBride: If the Examiner please, I will object to

that question. Mr. Coyne has not been qualified or endeavored to be qualified as an accountant.

Trial Examiner Purcell: He is the accountant in this case, is he not, Mr. McBride? He is the chief accountant for the Morton Salt Company.

Mr. McBride: Mr. Connor is the chief accountant of the Morton Salt Company, and so identified himself. Mr. Coyne is the general office manager, and never attempted to qualify as an accountant.

Trial Examiner Purcell: For a gentleman who is not an accountant, he certainly has furnished us with a lot of
2861 figures.

Mr. McBride: I take it, if the Examiner please, that I can furnish figures as to the number of clients I have, and run a tabulation, but that does not mean I have to be an accountant to do it. Mr. Coyne has furnished figures from the records under his direct supervision and control. There is nothing involved that requires him to be an accountant, or anything of the sort. When we come to the accounting records, we have furnished an accountant as a witness.

Trial Examiner Purcell: I will hear from you, Mr. Haslett, if you think the question is worth pursuing.

Mr. Haslett: Mr. Examiner, I want to know if these various documents were prepared in accordance with Mr. Coyne's opinion or best judgment. If he is an accountant, I can develop that later on, what his qualifications are.

Mr. McBride: I am not objecting to the question as such, except in so far as there is an attempt to characterize him as an accountant. If he wants to substitute "general office manager" I have no objection to the question, or if counsel wishes to drop the characterization entirely, I have no objection.

Mr. Haslett: What is your ruling, sir?

2862 Trial Examiner Purcell: I haven't ruled yet. Will you read back Mr. McBride's last remark?

(The record as above referred to was read by the Reporter.)

Mr. Haslett: I will just withdraw it, Mr. Examiner, and clear the record up.

Trial Examiner Purcell: Let the record show counsel's question is withdrawn.

By Mr. Haslett:

Q. Mr. Coyne, was the invoicing measuring factor used in these various exhibits done by you, as your own opinion?

A. Together with consultation with our executive officers.

Q. Will you name them, please, sir, the executive officers that were in consultation with you when you decided to use the measuring factor that you did use in invoicing the numbers of invoices?

A. Mr. Peterkin, Mr. Peterkin, Jr.

Q. Are they the only two?

A. I believe Mr. McBride.

Q. Is that the same Mr. McBride that is counsel in this proceeding?

A. That is correct.

Trial Examiner Purcell: The question was, who were the executive officers of the Morton Salt Company with whom you were in consultation. Do you wish the
2853 record to show that Mr. McBride is one of the executive officers of the Morton Salt Company?

The Witness: No, it would show him as the counsel for the Morton Salt Company.

Trial Examiner Purcell: And you wish your testimony corrected to that extent?

The Witness: Yes.

By Mr. Haslett:

Q. And did you confer with any one else, sir?

A. No.

Q. Was it your responsibility to prepare these documents, and to use the measuring factor of invoices?

A. That and our executive officers, yes.

Q. Were you directed to do it by your executive officers?

A. In a conference, we were. We decided on that method.

Q. At this conference, you decided on that method?

A. Yes.

Q. And that was your opinion, as well as the opinion of Mr. Peterkin, Sr., and Mr. Peterkin, Jr., is that correct, sir?

A. That is correct.

Q. Are you a certified public accountant, Mr. Coyne?

A. I am not.

Q. Have you ever studied accounting?

A. In my general procedures in the office, in so far
2864 as I needed it.

Q. Have you ever attended any school to study accounting?

A. No.

Q. Have you ever taken any written examinations on accounting procedure?

A. No.

Q. Have you taken any correspondence courses on accounting, sir?

A. My experience has all been in the office.

Q. Then I am correct when I state that you have made no specific study of accounting methods and practices?

A. None other than my actual practice and work at the office.

Q. Have you ever read any books on accounting methods and procedure?

A. Those that I feel will help me with my routines, and I am not concerned in the main in accounting work.

Q. I see. Would you name the authors of those various books that you have read?

A. No, I couldn't.

Q. Do you remember one of them?

A. No.

Q. Do you remember the name of one of the books?

Q. Do you consider yourself an accountant?

2865 A. I do not.

Q. Did you consider the question here involved an accounting problem?

A. No, I do not figure it involves an accounting problem.

Q. Is Mr. Peterkin, Jr. an accountant, if you know, sir?

A. I do not know.

Q. Did you know whether Mr. Peterkin, Sr. was an accountant?

A. I don't know.

Q. Did you consider it necessary to inquire as to whether either of these gentlemen were accountants when you were discussing the problem of preparing this so-called cost data?

A. I didn't feel it was necessary.

Q. Did you confer with any expert accountant and get

his opinion on whether or not these documents represented an accounting problem?

A. No.

Q. What is the Company's annual accounting period?

A. I am not related at all to their accounting practices in the office.

Q. You don't know what the period is, do you, sir, the accounting period?

A. I have nothing to do with that end of the work.

Trial Examiner Purcell: In order that I might
2866 follow you, Mr. Haslett, are you trying to elicit from the witness if the Morton Salt Company has a fiscal year which may or may not coincide with the calendar year?

Mr. Haslett: That is right, sir. I want to know what the accounting period is, if he knows.

Trial Examiner Purcell: Can you answer that, Mr. Coyne?

The Witness: Mr. Connor—

Trial Examiner Purcell: Can you answer it, Mr. Coyne?

The Witness: No.

By Mr. Haslett:

Q. Have you ever seen a profit and loss statement of the Company?

A. No.

2867 Mr. McBride: Mr. Examiner, on Friday, October 9th, 1942, at the close of the hearing held on that day, as counsel for the Respondent I withdrew from the Record Respondent's Exhibits 7-A to 15-B, inclusive, for the purpose of placing on certain of the exhibits within the grouping explanatory foot notes regarding the commencing date of the allowance of quantity discounts or of competitive adjustments shown on those various exhibits, where the exhibits themselves did not disclose the date of commencement of payment. That was done with permission of the Trial Examiner and counsel for the Commission, and the notations were to be examined by the Trial Examiner and counsel for the Commission to ascertain their accuracy and consistency with the testimony appearing in the record.

I have now completed the preparation of those foot-notes and they have been placed on the original exhibits and submitted to the Trial Examiner and counsel for the Commission for their examination, the exhibits having been returned to the record.

Trial Examiner Purcell: Did you get back your receipt from the Reporter?

2868 Mr. McBride: Yes.

Mr. Haslett: I haven't anything to say.

Trial Examiner Purcell: Let the record so show.

Mr. McBride: Mr. Trial Examiner, with permission of Mr. Haslett I should like to recall Mr. Peterkin at this juncture for a short amount of further direct examination, my inability to call Mr. Peterkin at the conclusion of Mr. Coyne's cross examination being due to previous engagements on Mr. Peterkin's part which I forgot at the time I committed him to a Wednesday morning schedule or a Tuesday afternoon schedule.

Is that agreeable?

Mr. Haslett: That is satisfactory.

Trial Examiner Purcell: Proceed.

DANIEL PETERKIN, JR., was thereupon recalled as a witness for the Respondent, having been previously sworn, testified as follows:

Direct Examination by Mr. McBride.

Q. Mr. Peterkin, I believe that in the course of your testimony, both as a witness on behalf of the Commission and as a witness on behalf of the Respondent, you testified to the fact that in certain areas the Morton Salt Company granted a cash discount of 1 per cent, 10 days, is that

2869 correct?

A. That is correct.

Q. For clarity on the record, can you describe that area geographically?

A. The area in which the Morton Salt Company, as a competitive measure, allows a 1 per cent cash discount for payment in ten days, is the eastern part of Pennsylvania, New York State, that portion of New York State in which we do business, New Jersey, Maryland, Delaware, and two counties in Virginia, Accomac and some other county. I have now forgotten the name.

Mr. Haslett: Mr. Examiner, I am going to move to strike the answer unless counsel will make the statement that by the use of the words "competitive measure" by Mr. Peterkin there was no legal conclusion meant by such phrase.

Mr. McBride: I am willing to make such a statement,

Mr. Examiner: It is simply a description by Mr. Peterkin without either factual or legal connotations meant. It is just what we term it at the Morton Salt Company.

Trial Examiner Purcell: Proceed.

Mr. McBride: Do you withdraw your motion?

Mr. Haslett: That is right. I withdraw my motion.

By Mr. McBride:

Q. Then outside of the geographical territory which you have described, the 1 per cent cash discount for pay-
2870 ment in 10 days, is not made or allowed by Morton Salt Company, is that correct?

A. That is correct.

Q. You have certain customers of the Morton Salt Company, do you, Mr. Peterkin, who purchase salt for shipment both into the geographical territory you have described as well as into territory outside of it?

A. Yes, we do.

Q. With respect to purchases of those types of customers would the 1 per cent, 10 day cash discount be allowed on all their purchases or only on such portions of their purchases as pertain to the geographical territory you have just described?

A. The allowance of that discount is confined to the territory just described, not elsewhere.

Q. That would be true of N. R. O. G., for example?

A. That is right.

Q. Then N. R. O. G. would receive the 1 per cent, 10 days for orders coming out of that territory but not elsewhere, is that correct?

A. That is correct.

Q. You referred to that as being a competitive adjustment or a competitive allowance. Will you describe what you meant by that, Mr. Peterkin?

A. My description of that adjustment as competi-
2871 tive was based upon the fact that we know certain eastern producers of salt who sell primarily within that area have, as an established practice, the allowance of 1 per cent for payment within ten days, and in order to remain on an equal basis in competing for the trade in that area we elected to do likewise.

Q. Does the Morton Salt Company reserve the right of withdrawing that competitive allowance at any time?

A. At any time, yes.

Q. So that it is an optional allowance as far as the Morton Salt Company is concerned?

A. That is correct.

Q. In deciding to make that competitive adjustment was the decision predicated on the same factors with respect to which you testified regarding National Tea, and Consolidated Companies and Thomas & Howard, for example?

A. With respect, you mean, to the competition?

Q. That is right.

A. No. There are several types of competition which we may meet. In the case of the 1 per cent 10 day discount we were meeting a condition which we knew to be standard practice by other producers with whom we were in competition.

In the case of the Consolidated Companies, Incorporated, the competition was slightly different, due to the
2872 geographical location of the Consolidated Companies' houses, that is their proximity to a competitor's plant, and because of a blanket lower price in the way of a percentage discount, which we knew had been offered to them, we elected to meet, in part, that competitive situation.

With respect to National Tea, the competitive adjustment to which I previously testified as being five cents, the reason we studied and which was a deciding factor, was the extremely low cost to that customer of other grades of table salt by other producers, packed in round cans. That was purely a local situation, and because of the unusual spread between the cost to that customer of our own brands and his cost on other brands we elected to adjust our price, not because of a discount quotation by another so-called competitor.

Q. Were there still other competitive factors entering into the Thomas & Howard situation?

A. Yes. That is a distinct competitive condition there, wherein we knew that the Thomas & Howard Company was being allowed a discount, presumably on a quantity purchase basis, which approximated that discount we allow to a $50,000 buyer of table salt. With that information in mind we elected to attempt to meet the condition by allowing a unit of discount, or approximately, of our net plant basis.

Q. Then I take it the competitive factors with re-
2873 spect to Frankford Grocery, wholesalers Company of

Philadelphia and Colonial Stores would be akin to that of Thomas & Howard rather than that of the other variety to which you have just testified?

A. That is right.

Q. In your testimony on behalf of the Respondent, Mr. Peterkin, you used from time to time the word "discount" in respect to payments made on the Blue Can to National Tea Company. Do you regard the entire 15 cents paid to National Tea Company as a quantity discount?

A. No, we do not. The quantity discount applying to National Tea Company is 10 cents per case, that discount applying to any purchaser of 5,000 cases of Morton's Blue Package in any twelve consecutive month period. The 5 cents additional allowance is by reason of a competitive adjustment which we elected to grant, although in our own conversation we sometimes refer to the two as a unit and erroneously describe it as a discount.

Q. When you say a "unit" you don't mean a unit such as is paid on the $50,000 purchases of table salt, do you?

2874 A. No, we use the word "unit" in this instance as a combination of 10 cents and 5 cents to make 15 cents.

Q. The aggregate amount paid on the two types?

A. The aggregate.

Q. Then, as I understand your testimony, Mr. Peterkin, there is no standardization of competitive adjustments paid by the Morton Salt Company, but rather they are governed by the type of competition to be met and by the extent to which Morton Salt Company might or might not choose to meet those various types of competition, is that correct?

A. Yes, that is correct, so far as any competitive adjustments are concerned. We have quantity discounts which have been described and which are granted as a part of our sales policy and which cannot be withdrawn unless and until we change our sales policy. Competitive adjustment, on the other hand, which we have just described, is an adjustment based upon the facts as we have them, and an adjustment which may be withdrawn at our option at any time.

Q. Mr. Peterkin, I show you Respondent's Exhibits 17 to 24, inclusive. I will ask you to examine the same and

state whether or not you have ever seen those schedules before.

A. Yes, I have seen all of them.

Q. You will observe, Mr. Peterkin, that each of the schedules in question refers to the period September 1, 1939, to August 31, 1940. Can you state who made the
2875 decision, and under what circumstances it was made, to use the period just referred to for those schedules?

A. The period chosen was as a result of a conference by the executive staff in our offices.

Q. Who was in attendance at those conferences, if you know, Mr. Peterkin?

A. Mr. Peterkin, my father; I was in attendance; Mr. Connor, and Mr. Coyne were called in for consultation; and our legal staff was called in.

Q. Can you state why the decision was made to use the year in question?

A. Yes. The decision as to this particular period was made as a result of the complaint having been issued by the Federal Trade Commission, and it was decided to take the period immediately preceding the date of the complaint.

Q. That is the twelve months' period just prior to the issuance of the complaint in this case?

A. That is correct.

Q. You are familiar, are you, Mr. Peterkin, with the scope of the billings involved in those various exhibits? By that I mean the scope of the billings by the Morton Salt Company on which certain of the tabulations on those exhibits are predicated?

A. Yes.

Q. Do you recall what billings were used?

2876 A. Yes, I do. We decided to use the Chicago country billing, as we term it, as being the most typical and the most accessible from which these figures could be tabulated.

Q. Were the metropolitan billings of the various associated offices immediately under the Chicago office jurisdiction included as well?

A. Those immediately under the Chicago office jurisdiction were.

Q. Minneapolis, Detroit, Milwaukee, St. Louis, New Orleans, and Chicago city sales?

A. Yes.

Q. Kansas City, Dallas, and San Francisco were excluded, is that correct?

A. That is correct.

Q. What factors were considered in arriving at the decision to exclude San Francisco, Dallas, and Kansas City billings, Mr. Peterkin?

A. Those billings, from our own records and from our information as to the general nature of our business would reflect the same results as we have attempted to put forth in these figures, but the availability of the data from which these figures were taken made it impractical to use the Kansas City, Dallas, and San Francisco tabulations. The figures here represented over, roughly, I should say, 70 percent of our billing, and since it is typical of our
2877 billing we wouldn't consider it economical or advisable to go beyond our own Chicago office factors.

Q. You say it is typical, Mr. Peterkin. What do you mean by being typical? Do you mean as to the type of customers or as to the type of products, or what?

A. Both. The results probably would be exactly the same except as to degree of volume.

Q. Mr. Peterkin, I believe you testified at length as a witness on behalf of the respondent, and to some degree as a witness on behalf of the Commission, to the specialty sales or specialty promotion program of Morton Salt Company, is that correct?

A. Yes.

Q. You are familiar with the operation of that specialty sales program?

A. Yes, I am.

Q. On page 2711 of the transcript of the record in this case Mr. Connor, as a witness on behalf of the respondent, specified the various items of cost which went into the specialty sales expense item appearing on Respondent's Exhibit 23, the special advertising expense on the Blue can being the figure in question.

I show you that portion of his testimony and ask you to examine the same and then describe, if you will, the manner in which those items are used in the specialty
2878 sales program. Now, in your testimony, Mr. Peterkin, I am not interested that you answer with regard to each individual item, but if you can describe in general the manner in which those various items are employed, it will answer my question.

A. In general the items shown here, except for the last two—

Q. (Interposing) Will you identify the last two, please?

A. —which are indicated as muslin signs and road signs, are used for point of purchase advertising or specialty work, as distinguished from our over-all advertising budget.

These items are furnished our specialty men for the purpose of promoting consumer acceptance of our products in the retail stores and are used either to distribute to customers or to draw the customers' attention to displays which, in turn, are made from some of the items such as dummy cartons and floor display cards, and in general to promote the distribution and sale of our products to the consumer.

Q. I believe you testified that that program obtained and was offered to all retail stores handling Morton Salt products, except American Stores, A. & P., Safeway, and Kroger, is that correct?

A. That is correct.

Q. Then in using those items to which reference has been made and in doing the work, it is offered to and done for all other retailers throughout the territory served 2879 by Morton Salt Company, is that correct?

A. That is correct, although there are listed here several different types of the same general item, some of which may have been used in one territory and others in another territory, depending upon our judgment as to their effectiveness in that particular area.

Trial Examiner Purcell: Off the record.

(Discussion off the record.)

By Mr. McBride:

Q. Mr. Peterkin, in your testimony which you have just given regarding the specialty sales program and the use of various sales items, you were referring, were you not, to the itemized list in Mr. Connor's answer at the bottom of page 2711 of the transcript of the record in this case, excluding always the items muslin signs and road signs, and you were not referring to the items appearing on Respondent's Exhibit 23, is that correct?

A. That is correct.

Q. Then the specialty sales program and the use of those various items, still referring to page 2711, exclusive

of muslin signs and road signs, is part and parcel of the specialty sales program offered all retailers other than the four indicated?

A. That is correct.

Mr. McBride: Cross-examine.

2880 *Cross Examination by Mr. Haslett.*

Q. Mr. Peterkin, you testified as to the cash discount which your company allowed to certain customers in a particular territory and I believe you said that is 1 percent, 10 days?

A. That is right.

Q. One percent off the invoice price, 10 days?

A. That is correct.

Q. Does that include freight?

A. Yes, it would.

Q. [illegible]. Would you name, please, for us those competitors of yours who give a 1 percent discount off the invoice price in that particular territory that you mentioned?

A. The International Salt Company of Scranton, Pennsylvania; the Worcester Salt Company of New York City, the Watkins Salt Company of Watkins Glenn, New York. I presume others selling in that area but whose plants are not located in that area.

Q. How did you know that the International Salt Company was giving this 1 percent discount on a 10-day basis?

2881 A. That inducement appeared upon their printed published price lists.

Q. You have a copy of that in your office?

A. We have seen them.

Q. You stated that your company gives Consolidated Companies and its various members a so-called competitive allowance of 7-1/2 cents per case on the Blue Package salt, and that such was done to meet in part the competition of some other competitor. What did you mean, "in part", sir?

A. The discount to which I am referring applied to our Morton Blue Package and resulted, being 5 per cent on the purchase price, in an allowance of 7-1/2 cents per case. The net cost to the buyer, after deducting 7-1/2 cents per case, was still higher than the price charged for a similar package under a competing brand.

Q. So it was not done to meet the low price of a competitor, but to get as close to it as possible, is that correct, sir?

A. Not necessarily. It was done to meet an over-all allowance of what we understood to be 5 per cent, although, in this particular instance, we knew that 5 per cent off our price did not reduce the actual cost to as low a figure as our competitor's price.

Q. Was there any other competitor of the Morton Salt Company that was selling the Blue Can salt to Con-
2882 solidated Companies, Inc., at $1.42-1/2 a case?

A. There is no other salt producer that manufactures such a package.

Q. Was there any other salt producer selling a round package salt of equal grade and quality and size to the Consolidated Companies, Inc., at $1.42-1/2 per case?

A. There were other producers offering their product in 26 ounce round cartons packed 24 to the case, which is the equivalent of our package.

Q. At what price were they offering them? Was it $1.42-1/2?

A. It was somewhat less than that. I don't recall the exact figure.

Q. It was not $1.42-1/2, was it, sir?

A. No.

Q. Do you know the closest figure to that particular figure, that is, $1.42-1/2, of a competitor?

A. No, I wouldn't be in a position to answer that. The published prices of our competitors' products are lower than ours, and from that they allowed a discount.

Q. Do you know how much lower they are, sir?

A. They range from $1.35 downward.

Q. $1.35 downward?

A. I believe $1.35 is as high as any competitor's round cans are priced.

2883 Q. So there is another 7-1/2 cent differential in price between the $1.42-1/2 price and the next competitor, isn't there, sir?

A. Well, it just happens to figure that, but from the $1.35 published price we understand our competitor was allowing at least 5 per cent.

Q. How did you know that, sir?

A. We were given that information by the customer.

Q. The customer told you?

A. Yes.

Q. What customer?

A. In this case the Consolidated Companies, Incorporated.

Q. They told you that some other firm had offered them a 5 per cent discount off of their list price?

A. That is right.

Q. Did they tell you the name of the firm?

A. Yes.

Q. What was the name of that firm?

A. The original quotation was made by the Miles Salt Company of New Orleans.

Q. Miles Salt Company of New Orleans. Did they give you any documentary proof of such a lower price being offered to them, sir?

A. I believe so, but I don't recall.

Q. It was really not a lower price, was it, because
2884 it was then 15 cents under your price?

A. That is correct.

Q. I believe you testified, Mr. Peterkin, that your Company grants the National Tea Company a 5 cent so-called competitive adjustment on the round package salt. What other competitor was manufacturing the Blue Can salt and selling it to National Tea Company at a 5 cent differential in price?

A. By that you mean 5 cents lower than our $1.40 price?

Q. That is right, sir.

A. There were none.

Q. There were none?

A. To my knowledge.

Q. Do you know of any other processor of salt that was selling a round package salt comparable in size and quality to the Morton's round package Blue label salt, to the National Tea Company at $1.35 a case?

A. In this instance there were other producers of round package salt of the same size and shape package at prices considerably lower than $1.35.

Q. I see. Your company did not elect to go down to the low price but just gave the 5 cent allowance, is that correct?

A. That is correct. In this instance the competition was abnormally low. Because of a concentrated market and an effort to obtain a valuable customer in that market,
2885 one, and perhaps two producers, chose to make quotations that resulted in a very wide spread between

the cost of the National Tea of our Blue package and the cost to them of another round package salt.

Q. Would you tell us the names of those two competitors that did offer the lower prices?

A. I understand one to be the Hardy Salt Company of Manistee, Michigan, and another to be the Michigan Chemical Company of St. Louis, Michigan.

Q. How do you know that, sir?

A. From information that was given to us.

Q. Given to you?

A. Not to me, no; to our organization.

Q. I see. It came to you in the regular channels of your business?

A. That is correct.

Q. Who gave the information to some member of your organization?

A. Some member of the National Tea Company. I don't recall who.

Q. You don't know the name of the gentleman that got the information, the member of your organization, do you, sir?

A. I don't recall; one of our men.

Q. One of your salesmen?

A. One of our sales managers.

2886 Q. I see. In no instance did the Morton Salt Company ever come down to the price quoted by the competitor?

A. Oh, no. We elected to reduce our price slightly, hoping to maintain that part of National Tea's business which we had previously enjoyed, in spite of the very wide spread between our prices and our competitor's prices.

Q. I believe you testified that Thomas & Howard Company got a unit discount or a unit competitive adjustment. There is no difference between them, is there, sir? I mean, no mathematical difference?

A. No. In speaking of the unit we refer to it regardless of whether it is a quantity discount or a competitive adjustment, and in each instance it is the same mathematical amount, approximately 5 per cent.

Q. Do you know the name of the competitor of Morton Salt Company who granted Thomas & Howard a unit discount of approximately 5 per cent on other grades of table salt?

A. On grades of table salt which they manufacture?
Q. Yes, which your competitors manufacture.
A. Yes, the International Salt Company of Scranton was one.
Q. If you know, sir, was that based on the fact that Thomas & Howard had purchased from International Salt Company $50,000 worth of table salt during a twelve consecutive month period?
2887 A. That I don't know. I don't know whether that is International's practice or not.
Q. I see. How did you know that Thomas & Howard were getting this unit discount?
A. We were so advised.
Q. By Thomas and Howard?
A. That is correct.
Q. Who in that organization told you, sir?
A. That I do not know.
Q. Did he tell you?
A. No.
Q. He told one of your men?
A. That is correct.
Q. It was not Mr. Timberlake, if you know, sir, was it?
A. I don't know.
Q. Do you know the name of the gentleman in your organization who received the information?
A. No, I don't. It came to me through the regular channels.
Q. You don't know whether it is the gentleman in charge of your Washington office?
A. I don't know whether it was given directly to him, or not. It would be relayed by him to me.
Q. What is his name?
A. Flynn.
2888 Q. Mr. Peterkin, you testified that there was a round table discussion in regard to the matter of figures that appear on Respondent's Exhibits 17 to 24. Why was it decided, and who decided, to use the Chicago country and associated office billings as the basis for the billing measuring factor in the preparation of those documents?
A. I believe I have already answered the first part of that, that it was decided to use that portion of our total billing because it was typical of all and because the information was readily available—

Trial Examiner Purcell: Read the question to the witness.

(The question above referred to was read by the Reporter.)

Trial Examiner Purcell: Continue your answer.

The Witness: —and as to the second part, the question was decided by my father, Mr. Peterkin.

By Mr. Haslett:

Q. He decided it?

A. Yes.

Q. What did he base his decision upon?

A. On his general knowledge of our methods, records, and the general trend of our business.

Q. You say your father predicated his judgment upon his general knowledge of the salt business?

2889 A. Of our business, yes.

Q. Of the Morton Salt business?

A. That is right.

Q. Would you refer to Respondent's Exhibit 20-A, please, sir?

A. Yes.

Q. I will refer you to the first two items that appear on that sheet. You have Thieman Bros., 22 invoices, net total sales value, $7,457.38; and M. Rom & Sons Co., 6 invoices, $6,874.20. Did your father know that it cost approximately four times the amount of money to bill Thieman Bros. that it did M. Rom for approximately the same amount of purchases?

A. I am sorry. I don't follow your question.

Trial Examiner Purcell: Read the question, unless counsel wishes to rephrase it.

Mr. Haslett: No.

(The question above referred to was read by the Reporter.)

The Witness: Perhaps I am wrong, but I see nothing on that exhibit to indicate the cost of invoicing, whether it be four times as much or two times as much.

By Mr. Haslett:

Q. If you will refer to Respondent's Exhibit No. 24 you will find there that the invoicing cost per invoice is

2890 $2.65¼.

A. Yes.

Q. And the plant cost is 57 cents per invoice, and then you have a credit cost per invoice of 41 cents for the carload customers. Did your father know at the time he made the decision that it cost approximately four times the amount of money to invoice M. Rom & Sons that it did to invoice Thieman Bros. for practically the same amount of goods?

A. You are now trying in your original question Exhibit No. 24 to Exhibit 24-A.

Trial Examiner Purcell: Exhibit 20-A.

The Witness: Yes, Exhibit 20-A. I beg your pardon.

By Mr. Haslett:

Q. That is right, because Exhibit 24 is a summation of all those exhibits.

A. I presume he had some general idea. I couldn't answer the question.

Q. How would he have that general idea, sir?

A. From his constant analysis of our business procedure.

Q. Are those analyses available for examination of the Commission?

A. I presume they could be if the Commission desired to spend some four or five years in our executive offices watching and learning the method of our policy making.

2891 Q. Well, it was not based on an actual survey but on his general knowledge, was it not, sir?

A. That, I imagine, was the case, yes.

Q. So he did not know how much it cost to invoice any particular commodity, did he, sir?

A. I doubt whether he did, to the penny.

Q. As it is shown here?

A. No. That would be determined from an actual analysis, such as was done.

Q. I believe you stated that it was not an actual analysis, that it was based upon his judgment.

A. That is true, except as to the dollars and cents expressed as they are here. He had a general knowledge, as I have, of what our business costs are from my own knowledge of our business. If we wished to determine the actual dollars and cents figure, either in this question or in any other question which might confront us, we would go to our various departments for the information necessary

to make the compilation, from which, by arithmetic, we can arrive at some figure such as is shown in Exhibit 24.

Q. Then referring to Respondent's Exhibit No. 24, Mr. Peterkin, did you know that the average cost of invoicing for all invoicing is $2.65½ per invoice?

A. Are you now referring to my knowledge or my father's knowledge?

2892 Q. Your knowledge. You said "we". Who did you mean by "we"?

A. At the present time it would be myself and others connected with the executive administration of our business.

Q. The only reason that you know it is $2.65½ is because, since the issuance of this complaint, you have tried to determine in some manner what is the average cost per invoice of Morton Salt, isn't that right, sir?

A. Let me put it this way, that we have a general knowledge that it costs so much money to render an invoice, carry a credit, manufacture the item, package it, ship it, and any other related items of expense in our business. We do not attempt to keep in our own minds or at our fingertips actual costs. They are readily available should the time come when we have to determine what they are, and in this case it is $2.65½, after we compiled the figures on the basis that seemed to us to be best suited to answer the Commission's complaint, from our knowledge of our cost factors.

Q. Will you refer to Respondent's Exhibit 20-A, Mr. Peterkin, the last two names that appear thereon, Gary Wholesale Grocery Company and Holleb and Company?

A. Yes.

Q. Can you tell me the actual cost for invoicing each of those customers?

A. I can't offhand, from memory. I presume they
2893 are in these exhibits.

Q. Would it be 34 times $2.65½ for Gary Wholesale Grocery Company?

A. If the Gary Wholesale Company purchased all of that in carloads I presume it would be.

Q. What effect has been given to that in the preparation of these documents, the carloads?

A. Well, we have some figures here which show credit costs, invoicing costs, plant costs, and total costs of various

types of buyers. The 5,000 case buyer, of which Gary Wholesale is one, shows on my copy of Exhibit 24 as being $2.65¼ per invoice.

Q. They purchased $17,170.74 of salt, is that correct, sir?

A. That is the total net sales value of the group of invoices taken here, yes.

Q. Therefore the billing cost for billing Gary Wholesale Grocery Company was 34 times $2.65¼, which is approximately $90.27, is that correct, sir?

A. I assume it is. I didn't figure it out.

Q. And that customer purchased $17,170.74 worth of salt?

A. As shown on Exhibit 20-A, yes.

Q. For the cost of Holleb & Company to the Morton Salt Company for billing its purchases of salt for that period, being $18,600.88, that would be 116 times 2894 $2.65¼, which would make a total of $307.98, is that correct, sir?

A. I assume so.

Q. Can you tell me why those two customers would fall into the same group, as far as cost purposes are concerned?

A. I am not sure I understand your question.

Q. Well, one, Mr. Peterkin, is costing the Morton Salt Company $90.27, and the other is costing $307.98, for approximately the same purchases. Why would they be in the same class as far as costing purposes are concerned?

A. Well, you have figures here which we have presented and, in turn, which show our costs per sales dollar and otherwise, of the various types of customers.

Q. If the figures of $90.27 and $307.98 are not correct according to the scheme of Respondent's Exhibit 24, will you tell me what is correct, sir?

A. I didn't say they were not correct.

Q. For these two particular customers?

A. I didn't say they were not correct. I assume they are, if you have just figured them out there on that pad of paper.

Q. Under what theory of accounting do you say it costs the same to bill one customer at $90.27 and the other at $307.98?

A. I am sorry. I still don't quite understand what you are driving at. We have records for handling and these costs are in the records for handling invoices to a 5,000

case buyer as contrasted to the handling of invoices
2895 to, let us say, a carload buyer or a $50,000 case buyer. Those are a matter of record here, and from that it would be very easy to determine what any particular customer's costs are to the Morton Salt Company.

Q. Mr. Peterkin, you don't mean to say that it costs the same to bill one customer at $90.27 and the same figure for $307.98, do you, sir, on the same quantity of goods?

Mr. McBride: May I have that question?

Trial Examiner Purcell: Read the question, please.

(The question above referred to was read by the Reporter.)

By Mr. Haslett:

Q. That is, $2.65½ per invoice.

Mr. McBride: Would you read that once more?

(The question above referred to was read by the Reporter.)

By Mr. Haslett:

Q. Do you understand it, Mr. Peterkin?

A. No.

Q. I will see if I can reframe it for you.

You have an average cost at $2.65½ per invoice. It costs you to bill one customer, namely, our friend Gary Wholesale Grocery Company, $90.27. Now, predicated upon the basis of $2.65½ it costs you $307.98 to bill Holleb
2896 Grocery Company for its requirements of salt, which is practically the same as the Gary Wholesale Grocery Company, isn't that correct?

A. The way you have it worked out, it is, yes.

Q. According to your theory, it cost you nearly four times as much to bill Holleb Grocery Company as it did to bill Gary Wholesale Grocery Company, when both of them were purchasing approximately the same amount of salt? A little more than three times as much?

Mr. McBride: Are you referring to the aggregate, or on the cost of each invoice?

Mr. Haslett: Mr. Peterkin stated that that was the actual cost, that they had established $2.65½ as the actual cost per invoice.

Trial Examiner Purcell. Wait a minute, gentlemen. We are getting out of order. If there be any discussion back and forth across the table, or any questions asked

between counsel, request permission to go off the record, please.

Mr. McBride: May we go off the record?

Trial Examiner Purcell: Off the record.

(Discussion off the record.)

Trial Examiner Purcell: Let the record show a five minute recess, please.

(A short recess was taken.)

2897 Trial Examiner Purcell: Recess is over. Come to order.

Mr. Haslett: Miss Reporter, will you read the question to Mr. Peterkin?

(The question above referred to was read by the Reporter.)

The Witness: The figures that you have worked out here on the basis of $2.65½ times the total number of invoices as shown on Exhibit 20-A, that is correct.

By Mr. Haslett:

Q. Mr. Peterkin, did your company ever make a study to determine how much it cost you to invoice Holleb Company?

A. The results of a study are contained in these exhibits, and from that it is relatively simple to determine just exactly how much it does cost.

Q. Prior to the preparation of these exhibits you did not know how much it cost you to bill anybody, did you, sir?

A. We didn't have the material in such form as it is presented here, because we had no occasion to assemble it in answer to a Federal Trade Commission's complaint. We had a general knowledge from our experience of our various costs, including the cost of invoicing.

Q. But no actual knowledge?

A. If by "actual knowledge" you mean in this form, no.

Q. Had your company ever tried to establish it by

2898 some cost analysis or time study of any kind, sir?

A. Not for the purposes of determining specifically the cost per invoice. We had that knowledge, yes, through various channels.

Q. What do you mean, you had that knowledge through various channels?

A. Well, our regular records that are kept as a day to day part of our regular conduct of our business would show us what these various costs amounted to. We kept those

records in slightly different form than they are now presented, because of our desire to know at all times just how much our business cost us.

Q. Isn't it a fact, Mr. Peterkin, that the only invoice cost you have is that invoice cost shown on Respondent's Exhibit 24, being $2.65½, which is arrived at from the compilation of invoices of all types of customers irrespective of the purchases?

A. That basic cost appears on Exhibit 24 as $2.65½, that is correct.

Q. Mr. Peterkin, I show you now Commission's Exhibit 56-C, being an invoice to Albert Mackie and Company of New Orleans, Louisiana, for 5 sacks of 100 pound clear fine salt at 78½ cents, being a total cost of $3.93. Can you state what the cost was for invoicing that customer for the requirement shown thereon?

2899 (Passing exhibit to the witness.)

A. No, I am afraid I can't.

Q. Was that invoice taken into consideration in arriving at the average figure of $2.65½?

A. I believe it was.

Q. Take some invoice over here, Commission's Exhibit 70, to the Covington Grocery and Grain Company of Covington, Louisiana, showing eight items. Did you take that invoice into consideration in arriving at the $2.65½ figure as shown on Respondent's Exhibit 24?

A. No, I don't believe so. That invoice was in 1941 and these figures are compiled over a period 1939 to August 31, 1940.

Q. That invoice would not be taken into consideration, then?

A. That is after the time of the compilation of these figures.

Q. By the way, Mr. Peterkin, were the credit memos taken into consideration in arriving at the figure $2.65½?

A. I believe they were.

Q. They were taken into consideration?

A. I believe so. Mr. Coyne can answer that better than I can.

Q. As far as you know, they were?

A. As far as I know, they were.

2900 Q. Mr. Peterkin, I now show you Commission's Exhibit 108-A, which is an invoice between the Morton Salt Company and Whitfield Grocery Company of

Milledgeville, Georgia, and ask you to state whether or not that invoice was taken into consideration in the compilation of Respondent's Exhibit No. 24?

(Passing exhibit to the witness.)

A. Yes, I believe it was.

Q. That document shows 10 items?

A. That is correct.

Q. Mr. Peterkin, again referring you to Commission's Exhibit No. 56-C, I believe you testified that the five sacks of 100 clear fine salt, 363 invoice, was taken into consideration in the preparation of Respondent's Exhibit No. 24.

A. When I made that statement I did not notice the date. I imagine it was if it was within the period.

Q. It is January 5, 1942, so it would not be.

A. In that event it would not be, no.

Q. I show you Commission's Exhibit 55-C, which is an invoice to the Crescent City Wholesale Grocery Company, dated August 16, 1940, for 15 cartons of 24 No. 1's 10 ounce Morton's Free Running Salt at $1.50. Was that invoice taken into consideration in the preparation of Respondent's Exhibit No. 24?

(Passing exhibit to the witness.)

2901 A. It falls within this period. It probably was, yes.

Q. There is only one item on that invoice, isn't there, sir?

A. Yes.

Q. It involved the calculation of only one extension on that particular invoice, isn't that correct, sir?

A. That would be correct.

Q. I refer you again to Commission's Exhibit 108-A with the ten items. That involved ten extensions, didn't it, sir?

(Passing exhibit to the witness.)

A. That would be correct, yes.

Q. Would you say that it cost ten times as much to make the invoice for the Whitfield Grocery Company, known as Commission's Exhibit 108-A, as it did for invoicing the Crescent City Wholesale Grocery Company with one item, one extension, as shown by Commission's Exhibit 55-C?

A. No, I would not.

2902 Q. There are ten extensions on one, Mr. Peterkin, and only one extension on the other. Do you think it would cost ten times as much to make extensions on one

of the Commission's exhibits as compared to the other with the one extension?

A. I wouldn't know whether it did or not.

Q. You have to make ten separate calculations, don't you, sir?

A. That is correct, but you have to set your machine up only once.

Q. That is right, you only put your invoice in once, but there are ten separate items and ten separate calculations.

A. As to that, it is ten times as much work, yes, sir.

Q. Yet under the theory that is set forth in Respondent's Exhibit 24, it costs just as much to invoice the item with the ten invoices, rather, the customer with the ten items on the invoice as it did to invoice the customer with the one item, is that correct, sir?

A. As to the basic cost on this analysis, yes.

Q. Mr. Peterkin, why did you decide to use the Chicago country and associated office billings as the basis for the compilation of these various documents?

A. I was under the impression I had already answered that.

Q. Did you answer that, sir?

Trial Examiner Purcell: If you did, answer it again, please.

2903 A. Because we considered that the Chicago country billings were typical of the entire operation and because the data available for that compilation was readily at hand.

By Mr. Haslett:

Q. And who do you mean when you say "we"?

A. That is, the decision was made by Mr. Peterkin, my father, and I, sat in on that, in conference.

Q. I see, sir. And what did you base your opinion upon that it was typical?

A. From our knowledge of the business.

Q. Not by any actual survey?

A. If by any actual survey, you mean in the form such as is presented here, no; but from our daily records, our general knowledge of the reports that we obtained from all of our offices, in fact, our general knowledge of the business as to the Chicago country billing and the branch office billing. We knew that this would be a typical presentation.

Q. And that was your opinion?

Trial Examiner Purcell: Mr. Haslett, if you will pardon me, I asked the witness to repeat his answer to the former question, but these last few questions have been repetitious.

Mr. Haslett: I see, sir.

Trial Examiner Purcell: I think it has already been fairly covered in the record, if you will permit me, sir.

2904 Mr. Haslett: Very well, sir.

By Mr. Haslett:

Q. Mr. Peterkin, you testified that if the Kansas City, Dallas, and San Francisco offices were taken into consideration, that you would have practically the same results as to those offices as you would have to the Chicago and its associated offices?

A. That is correct, except as to the degree of volume.

Q. I see. And what do you base that opinion upon, sir?

A. From my knowledge of the operation.

Q. You mean you have never tabulated each of the offices to determine that, sir?

A. Not in just this form. There are many other records that indicate very clearly that to be true.

Q. What other records indicate that, sir?

A. Daily reports coming in from the three offices you have just mentioned, together with a compilation of the data obtained from these reports, indicating the goods sold, type of sales, number of invoices, et cetera.

Q. Mr. Peterkin, I don't remember, it has been quite a long time ago, whether I asked you the question of how you arrived at the $1.60 price on the round package sold for less-than-carload lot shipment, but I don't think it would hurt to have it in the record again. Would you tell us how that figure was arrived at, sir?

2905 A. If I understand you correctly, it was a combination of our manufacturing costs, selling costs, billing costs, credit costs, and various other costs that go into the final figure in cost of items, plus profit which we felt was reasonable, and resulted in that figure.

Q. Do you know approximately what date that figure was decided upon?

A. To the best of my recollection, about 1937.

Q. Mr. Peterkin, those same factors would be taken into consideration in arriving at the price put on any types of salt by the Morton Salt Company, is that correct, sir?

A. That is correct.

Q. And it is not just to the $1.60 round package salt?

A. No.

Q. And the same thing would be true as to the $1.50 price for the round package Blue Label salt?

A. That is correct.

Q. And all these various factors would be taken into consideration?

A. That is right.

Q. How did you arrive at the differential or 10-cent differential between the $1.50 and $1.60 price? How was that arrived at, sir?

A. The carload discount of 10 cents is the figure you are speaking of?

2906 Q. That is right, sir.

A. That was arrived at as a purely arbitrary discount.

Q. There was never any study made to determine whether there was an actual saving in the carload and less-than-carload price of 10 cents?

A. There were never any studies made in such form as are now presented.

Q. I see. It was just an arbitrary figure?

A. An arbitrary figure based upon our knowledge of the differential in cost.

Q. The figures now presented have to do with an entirely different factor, that is, all billing costs? Isn't that correct, sir?

A. That is one factor, yes.

Q. You are not attempting in these figures to make any segregation between the $1.50 and $1.60 price on the round package salt, are you, sir?

A. None whatsoever, no.

Q. Mr. Peterkin, would the fact that an order was received by telephone from one of Morton's customers have anything to do with the cost of handling the particular order?

A. Conceivably, it might.

Q. Have you ever made any survey to determine whether it would have anything to do with the cost?

A. Not to my immediate knowledge.

2907 Q. Would the fact that an order was received direct from the customer through the mail have anything to do with the cost of handling such order?

A. It is possible it might, yes.

Q. And you have never made any survey to determine whether there would be an actual savings or not?

A. Not to my knowledge.

Q. No effect would be given to each of those items, that is, the telephone orders and the mail orders, in the preparation of these documents?

A. None would be necessary in the preparation of these.

Q. That is Respondent's Exhibit 24?

A. That is correct.

Q. Why wouldn't it be necessary, sir?

A. Because all types—total costs, rather, all total costs are figured in this compilation.

Q. Is that your conception of sound accounting?

A. I would pass on it, yes.

Q. I see, sir. Are you an accountant?

A. No, I am not.

Q. Do you know approximately the number of orders at the Morton Salt Company received from its various customers by the use of the telephone during a given week?

A. I don't, no.

Q. You never tried to determine that, sir?

2908 A. I never have. From my own knowledge, there are very few.

Q. How do you know that?

A. Because they usually come in as reverse calls. We check them rather carefully.

Q. And that would be on customers outside of the city of Chicago, wouldn't it, sir?

A. That would be true.

Q. You might have a number of customers in Chicago that would pay a nickel to place an order with the Morton Salt Company?

A. That occasionally happens in the metropolitan area during times of a severe storm, for instance. We very often get quite a volume of telephone orders then.

Q. Mr. Peterkin, were you the one who determined what cost would be taken into consideration in the preparation of Respondent's Exhibit 24 and the supporting documents, the groups of costs?

A. No, that was determined by Mr. Peterkin, Sr.

Q. That was determined by Mr. Peterkin, Sr.?

A. Yes.

Q. Do you know on what basis it was determined?

A. May I have that previous question read?

Trial Examiner Purcell: Read the question.

(The question above referred to was read by the Reporter.)

2909 A. The costs that were taken were costs which, when compiled, gave a very clear picture of the point we were trying to indicate, that is, savings in the cost of doing business, one customer or a group of customers as against another.

By Mr. Haslett:

Q. Do you know, Mr. Peterkin, why certain groups of costs were taken into consideration in the preparation of Respondent's Exhibit 24 and supporting exhibits, and certain other groups of costs were not taken into consideration in the preparation of those documents? Do you know, sir?

A. Why, yes. The variables, the costs that show variables were taken in. Fixed costs, which have no bearing in our discussion of the discount brackets, do not appear in the exhibits.

Q. Do you know of your own knowledge, sir?

A. Yes.

Q. And do you have men that call on the large retail chains?

A. On which large retail chains?

Q. A. & P., Kroger.

A. Certainly.

Q. And Safeway?

A. Certainly.

Q. Are their salaries and expenses taken into consideration?

A. Yes.

2910 Q. Will you show me where they are taken into consideration?

A. I can't point out the separation. They are in the general figures.

Q. The salaries of the various men that call on the large retail chains are not shown in any of the exhibits that have been introduced in support of the respondent's defense?

A. Not specifically in terms of salary per individual, no.

Q. I see, sir. Yet they are costs of selling the company's products, aren't they, sir?

A. Yes.

Q. And that same class of costs is not used in calling on the small customers?

A. Oh, yes, it is.

Q. Do you have the same group calling on the retailers, the large chain retailers, that call on the small independents?

A. Very often the same man will call on both.

Q. Did you explore those costs?

A. By exploring, you mean individual costs?

Q. Did you make a time study as to how much time was devoted to one customer as compared to that devoted to the other customers?

A. The over-all figures are in, yes.

Q. I mean was the time study made?

A. Of how much time it took one man to call on
2911 the A. & P., and one man to call on Johnny Jones, let us say?

Q. Yes, sir.

A. I don't believe so.

Q. There wasn't any time study made, then, at all?

A. It wouldn't have any bearing on the particular exhibits we have introduced.

Q. It might just as well have a bearing if it cost more to sell one group than it did another?

A. It is quite possible, but we didn't include that element of expense in our exhibits.

Q. Isn't it a fact, Mr. Peterkin, that if you did make a time study of the costs between the various customers and that was explored, it might have a material bearing on the figures that you have submitted here; isn't that true, sir?

A. Speaking from my own personal viewpoint, it probably would widen the spread between an individual purchaser and a quantity purchaser.

Q. But you don't know, do you, Mr. Peterkin, what effect it might have upon these documents?

A. I am not sure that I understand that question.

Q. You have never made the study, have you, sir?

A. Specifically with reference to these exhibits?

Q. That is right.

A. No, it has no bearing on these exhibits.

Q. Then you don't know what effect that class of
2912 expense would have upon the exhibits?

A. I have a general knowledge of it, yes.

Q. And that would be only an estimate or guess?

A. It would be more than a guess. It would be based upon my knowledge of our cost of sales.

Q. In the absence of a cost study?

A. In the absence of a cost study, yes.

Q. Did you explore warehouse costs, warehousing costs?

A. To what extent?

Q. You tell me to what extent you made the exploration.

A. We have a full and complete record of all costs of the operation of all warehouses. We naturally would have to have that.

Q. Is that reflected in these exhibits?

A. Insofar as it has a bearing on the exhibits, it would be, yes.

Q. Where is it reflected?

A. I couldn't point it out to you specifically. It isn't broken down that way.

Q. I see. It is included in other costs?

A. Yes.

Q. Not separated; there is no way of finding out or putting your finger on it and saying, "This is warehousing cost and this is selling cost"?

A. Not from these exhibits, no.

2913 Q. Loading costs, have you ever explored the loading costs of your products?

A. Certainly we have.

Q. Is that reflected in these exhibits?

A. No, it is not.

Q. Then am I to assume that you would have the same costs on loading a car as you would have loading one case of salt?

A. Loading one case on what?

Q. On a car.

A. Hardly.

Q. Yet that wasn't taken into consideration in the preparation of these exhibits, was it, sir?

A. That is not our defense.

Mr. Haslett: I think that is all, Mr. Peterkin, and thank you very much, sir.

Trial Examiner Purcell: Redirect, please.

Mr. McBride: I have one or two questions.

Redirect Examination by Mr. McBride.

Q. Mr. Peterkin, will you state for the record the date of your father's death, please?

A. Yes, March 10, 1941.

Q. And he was president of this company up to the date of his death?

A. That is correct.

2914 Q. And you were his successor?

A. That is correct.

Q. Mr. Peterkin, you also testified that, referring to Consolidated Companies, for example, on the Blue Can, a competitive adjustment of approximately 5 percent, or 7½ cents, was allowed, but that the list prices of competitors, and particularly where competitors, competing producers, might be giving discounts below their published prices, there was still a differential between your $1.42½ on the Blue Can and the top prices on competing types of table items?

A. That is correct.

Q. Have you found it necessary, Mr. Peterkin, as a merchandising policy, in order to obtain business, always, at all times, and on all salt items sold by the Morton Salt Company, to have the prices of the Morton Salt Company as low as comparable prices for any competing items of other competing producers?

Mr. Haslett: I object to that, Mr. Examiner.

Trial Examiner Purcell: Off the record.

(Discussion off the record.)

Trial Examiner Purcell: On the record.

Mr. Haslett: Mr. Examiner, I want to object to that question on the ground that it precludes the Commission from determining what competition was to be met. One of the main issues in this case is that of meeting an

2915 equally low price of a competitor, and to say that it is a policy of the Morton Salt Company to stay or to get down to such lower price in order to be in line with other competition I think is taking from the Commission one of its functions, to determine whether or not the price quoted by Morton Salt Company was that of meeting an equally low price to the competitor in good faith, or whether or not that was an attempt to obtain business or to retain business.

Mr. McBride: Mr. Examiner, I don't follow the pertinency of the objection to the question at all. Let us assume that one of the main issues of the case is meeting equally low prices. I didn't know until now that that was a main issue.

Be that as it may, I suppose, if that be true, and that the Commission has the prerogative of determining facts as to whether legally the competition exists, whether we have in good faith met it, that still doesn't preclude us from showing that we didn't necessarily go clear down with the competition.

Trial Examiner Purcell: We have gone far enough with argument, gentlemen. If the Commission has the prerogative, as counsel for the Commission says, and my interpretation of the word "prerogative" being what it is, meaning an exclusive privilege, the Commission can't be deprived of it by any opinion of this witness.

2916 Objection overruled. You may proceed.

The Witness: May I have the question read?

Trial Examiner Purcell: Read the question, please.

A. No, we have not.

By Mr. McBride:

Q. Therefore, when you testify, Mr. Peterkin, that in meeting certain competition which you have described at various times, in part rather than in full, you were, in fact, testifying to the exercise of the judgment of the sales staff of Morton Salt Company, as to how far toward a competing price you need go in order to retain or get the business, is that correct?

A. Not as to sales staff; to the executive staff, that is right.

Q. The executive staff?

A. Yes.

Q. That in general outlines the policy as to the competitive adjustments, and as to how much was to be paid, is that correct?

A. That is correct.

Mr. McBride: That is all, Mr. Examiner.

Recross Examination by Mr. Haslett.

Q. Mr. Peterkin, isn't it the policy of your company also to make any competitive adjustment that it thinks
2917 is necessary in order to get business as well as to retain business?

A. That might possibly be true, Mr. Haslett, but I couldn't say. Generally speaking, a reduction in the price by the Morton Salt Company is almost always to retain business, not to acquire new business.

Q. You don't mean by that statement that Morton Salt Company is not in the business to increase its volume, but only to retain such volume as it may have?

A. I beg your pardon?

Mr. Haslett: Read the question.

(The question above referred to was read by the reporter.)

A. Not at all. Our business is to retain one volume as well as to attempt to increase that volume.

By Mr. Haslett:

Q. And that volume may be increased by the fact of granting a competitive adjustment, so-called, to a proposed customer in order to obtain his business, isn't that true, sir?

A. That could be true, if I understand your use of the word "competitive."

Q. That is right. Was that true in the case of the National Tea Company?

A. No, it was not.

Q. Was it true in the case of Thomas & Howard?

A. No, in the case of Thomas & Howard, we were
2918 selling them prior to the time of the lower prices, as I recall it.

Q. Was that the case of the Colonial Stores, Inc.?

A. I couldn't say on that. I rather doubt it.

Q. How about Consolidated Companies?

A. It was not true in the case of Consolidated. We were selling Consolidated prior to the time of the reduction of prices.

Q. Who would know about the Colonial Stores in your organization, Mr. Stratford?

A. He might possibly. I just don't recall it offhand.

Q. Isn't that the true fact in the case of Wholesale Companies, Inc., of Philadelphia, Pennsylvania?

A. Isn't that what?

Q. Isn't that a fact in the case of Wholesale Companies, Inc., of Philadelphia, Pennsylvania?

A. Which part of your question?

Q. Wasn't the competitive adjustment made just to get the business and not to retain it?

A. No, I believe it was in order to retain it.

Q. You had had the business before?

A. I am almost sure. I would rather refer to our sales records. I am almost sure, however, that we were selling them some part of their requirements prior to the time it was necessary to reduce the price.

Q. You wouldn't say that that has never been done,
2919 would you?

A. Oh, no.

Mr. Haslett: That is all, Mr. Peterkin. Thank you very much, sir.

Mr. McBride: I have no further questions.

(Witness excused.)

Trial Examiner Purcell: That is all that you have, then, with this witness?

Mr. Haslett: I won't recall him any more here in Chicago. Of course, I might recall him as my own witness in my rebuttal case.

Mr. McBride: I want this on the record, with Mr. Peterkin's appearance this afternoon, you have used your reservation for any further cross-examination that you reserved at the time of his original appearance on behalf of respondent, have you?

Mr. Haslett: I think that is right, Mr. McBride, but I am sure if some questions came up in my mind, that if Mr. Peterkin were available, while we were here in Chicago, you wouldn't have any objection to his answering them.

Mr. McBride: Except this: He won't be available either tomorrow or Wednesday. Hence my reason for breaking in on the cross-examination of Mr. Coyne this afternoon. Except for that fact, he would otherwise be available.

Mr. Haslett: I think I am through with him.

2920 Trial Examiner Purcell: All right. Mr. Peterkin, you are finally discharged.

Mr. Haslett: Mr. Coyne, will you resume the stand?

ARNOLD J. COYNE resumed the stand and was examined and testified further as follows:

Cross-Examination.

By Mr. Haslett:

Q. I believe you testified, Mr. Coyne, that the total net sales after freight for the period September 1, 1939, to August 31, 1940, on all salt items, on all shipments amounted to $6,799,916.41, as represented by Commission's Exhibit 17.

Does the figure represent the net sales over all the country after deducting freight, or have some sales been omitted therefrom?

A. It represents the sales of the Chicago and associated offices.

Q. Since you omitted the sales in the Dallas, Kansas City, and San Francisco offices, will you please explain the exact procedure which you followed in eliminating the costs applicable to those sales which are omitted?

The Witness: Will you read that back?

(The question above referred to was read by the reporter.)

2921 By Mr. Haslett:

Q. Have you got that now, sir?

A. Yes.

Q. Will you tell us and explain thoroughly on the record if any separations were made?

A. We used only the factors involved for the Chicago and associated offices.

Q. What do you mean by that, the factors involved?

A. The factors involved in our invoicing procedure.

Q. Just the invoicing, billing, is that correct, sir?

A. Billing as well as under advertising.

Q. Referring to Respondent's Exhibit 22 and calling your particular attention to Tabulating Expense, $5,347.08, was that for the entire company or what was it for, sir?

A. That figure included the expense of the tabulating department, yes.

Q. From the San Francisco, Kansas City, and Dallas offices, also, sir?

A. There would be some work done for those offices.

Q. In that figure?

A. Yes, but it was so minor. It is impossible to segregate it.

Q. You didn't eliminate it, irrespective of how minor it was, did you, sir?

A. No.

2922 Q. It is still in there?

A. Yes.

Q. Now, would the same be true as to the traffic expense, the next figure above that, sir, on Respondent's Exhibit 22?

A. They do not handle any orders for the Kansas City, Dallas, or the San Francisco offices.

Q. I know, but I believe you testified that the traffic expense would be the compilation of sales, isn't that correct, sir?

A. That is correct.

Q. Well, would the expense include the preparation of the scales used in the San Francisco office, and the Kansas City and the Dallas offices?

A. Yes, it would.

Q. And those scales would be prepared by these people, is that correct, sir?

A. They would be prepared in Chicago.

Q. And the expenses are reflected on Respondent's Exhibit 22?

A. There would be very little involved in that. They would be reflected in that figure.

Q. What do you mean by "very little involved"? They have scales just the same as any other section of the country, don't they, sir?

A. Not in comparison with the Chicago territory.

2923 Q. They have a scale from the Salt-air plant, don't they, sir, in Salt Lake City, Utah?

A. There are freight rates involved there.

Q. Freight rates. The preparation of those freight rates is included in the traffic expense on Respondent's Exhibit 22?

A. Yes, it would be.

Q. You have made no effort to segregate that, have you, sir?

A. There again it is so minor it would be impossible to segregate.

Q. But no effort was made to segregate it whereby the San Francisco, Dallas, and Kansas City expenses were eliminated, was there, sir?

A. It was taken into consideration at the time, and we found that it was almost impossible to segregate such items.

Q. So that would be impossible to the set-up at the office, is that correct?

A. That is correct.

Q. Where are the accounts receivable kept, sir, for all offices?

A. In their respective offices.

Q. Don't you have a general ledger in the Chicago office of accounts receivable?

A. The accounts for the Chicago office are kept in Chicago, and those for San Francisco would be kept in
2924 San Francisco, and that would be true of all of them.

Q. Do you have a control ledger in the Chicago office that shows what money is owing to you from your various customers throughout the country?

A. It probably would be reported to our accounting department.

Q. Is the cost for performing that service included on Respondent's Exhibit 25 under the heading "Chicago city sales (exclusive of outside salesmen)" and "Chicago country sales (exclusive of outside salesmen)"?

A. To which exhibit are you referring?

Q. 25, sir.

A. Would you repeat that question?

Trial Examiner Purcell: Read the question.

(The question above referred to was read by the reporter.)

A. There are no costs included for Kansas City, San Francisco, or Dallas.

By Mr. Haslett:

Q. No costs of any kind?

A. None whatever.

Q. And there is no cost incurred in the main office in connection with accounts receivable in those three offices?

A. There would be in our accounting department, but those figures are not reflected here.

2925 Q. Mr. Coyne, I now refer you to Respondent's Exhibit 22 and call your particular attention to the item "Office supplies, forms, and so forth", $67,575.99. Will you tell me what that includes?

A. Chicago and associated offices, supplies, invoice forms, various items of that type.

Q. Does it include any office supplies or form for Dallas, San Francisco, or Kansas City offices?

A. It does not.

Q. Where is the accounts receivable for the associated offices? Not Chicago, now, the associated offices, where is that reflected on Respondent's Exhibit 25?

A. The accounts receivable for the associated offices, in sofar as their country sales are concerned, are in the Chicago office.

Q. You didn't answer my question, Mr. Coyne. I said where on Respondent's Exhibit 25 are the accounts receivable for the associated offices, not the Chicago office, now, for city sales and country sales of the associated offices.

A. You are referring to Exhibit 25?

Q. That is right, sir.

A. Part of it is included on 25, and your collection expense would be on 26.

Q. I am not talking about collection expense now, sir.

A. Accounts receivable are handled in our credit department.

2926 Q. Does the credit department keep the actual accounts, or keep the books for the company?

A. They keep our accounts receivable records there, the posting of the customers' accounts.

Q. And no part of that is on Respondent's Exhibit 25?

A. That part would be reflected in 26.

Q. Under the item "Credit Department", Office salaries, $17,540.40?

A. That is right.

Q. It would be in that figure?

A. I haven't the names here, but I am quite positive it is in that figure.

Q. Do you have supervision of that department?

A. Yes.

Q. Does the figure $17,540.40 represent the combined salaries of all employees working in the credit department?

A. No, it does not.

Q. Why doesn't it?

A. Well, they are separated there. Part of them work on collection work and others work on the regular credit routine.

Q. Does it contain any part of your salary or compensation?

A. It does not.

Q. Does it contain any part of salary for any other supervisory position?

A. You are referring to Exhibit 26?

2927 Q. That is right, $17,540.40.

A. No, it does not.

Q. It represents the clerks who keep the accounts receivable, is that correct, sir?

A. Represents the clerks in the credit department.

Q. Which is under your supervision?

A. That is correct.

2928 BEFORE THE FEDERAL TRADE COMMISSION.

(Caption—4319)

Room 103-104, Sherman Hotel,
Chicago, Illinois,
Tuesday, October 20, 1942.

Met, pursuant to adjournment, at 10 a. m.

Before:

James A. Purcell, Trial Examiner.

Appearances:

John T. Haslett, Esq., Attorney for the Federal Trade Commission.

L. M. McBride, Esq., 310 South Michigan Avenue, Chicago, Illinois, attorney for Respondent.

2929 ARNOLD J. COYNE was thereupon recalled as a witness for the Respondent, having previously been sworn, testified as follows:

Cross-Examination (Continued).

By Mr. Haslett:

Q. Mr. Coyne, calling your attention again to Respondent's Exhibit No. 26, and if you will recall, we were talking about the Credit Department, showing the figure of $17,540.40.

You stated that that figure represents the clerks who keep the accounts receivable in the Chicago office, that is, in the Credit Department.

Now, does that figure cover the accounts receivable, or the credit operations for the Dallas, Kansas City, and San Francisco offices also, sir?

A. You are referring to the figure of $17,540.40?

2930 Q. That is right, sir.

A. If I stated that covered the accounts receivable bookkeepers, I was in error. That would not be in that figure.

Q. What is in that figure, sir?

A. That would be the clerks in the Credit Department; and that portion of the clerks that work in the collection department. Just that one figure would be the clerks in the Credit Department, the $17,540.40.

Q. I see. That department is under your supervision, isn't it, sir?

A. That is correct.

Q. Now, does that figure include the credit operations that are effectuated in the Dallas, Kansas City, and San Francisco offices?

A. It does not.

Q. Does it include any portion of the operations in those three offices?

A. No, it doesn't.

Q. Would you explain to us the procedure that you followed in eliminating the three offices from the credit operations of the Morton Salt Company?

A. We did not take into consideration any of the credit operations from these three offices that you mentioned.

Q. I know that, sir. You stated that before. But I want to know the procedure that you followed in separating

2931 the credit costs from the Chicago and associated offices, as distinguished between those offices and the Dallas, Kansas City and San Francisco offices, as shown by the figure $17,540.40?

A. The expense of those offices would be at those particular offices, not in the Chicago figures.

Q. And when you say expense, what do you mean, sir?

A. Their credit expense.

Q. And that would be clerks' salaries?

A. At those various offices.

Q. Do you have any supervision over the clerks in the Dallas, Kansas City, and San Francisco offices?

A. Only isofar as their invoicing procedures and routines are concerned.

Q. And is your salary figured in this figure of $17,540.40?

A. It is not.

Q. Mr. Coyne, does the Credit Department in Chicago keep a general ledger account of the credit operations of the Dallas, San Francisco and Kansas City offices?

A. No.

Q. Do you keep any records of any kind of what goes on in the Credit Department in those three offices?

A. Our accounting department would have that information.

Q. Well, some records are kept, aren't they, sir?

A. That is correct.

Q. And that is an expense, isn't it, sir?

2932 A. Yes, it would be.

Q. And that would be included in this figure of $17,540.40?

A. It would not be.

Q. Where would it be included?

A. It would be included through our accounting procedures.

Q. Will you show us what expense on the documents included such operations?

A. There is no expense on this document that included the operations for those offices.

Q. Are there any documents there that include the expense of the Chicago office, in connection with the operations of the Dallas, Kansas City, and San Francisco offices?

A. No.

Q. Mr. Coyne, now reading from the record, page 2921, your testimony yesterday on cross-examination, sir:

"Q. Referring to Respondent's Exhibit 22, and calling your particular attention to Tabulating Expense, $5,347.08, was that for the entire company, or what was it for, sir?

"A. That figure included the expense of the Tabulating Department, yes.

"Q. From the San Francisco, Kansas City, and Dallas offices also, sir?

"A. There would be some work done for those offices.

2933 "Q. In that figure?

"A. Yes, but it was so minor. It is impossible to segregate it.

"Q. You didn't eliminate it, irrespective of how minor it was, did you, sir?

"A. No."

I just call your attention to that testimony in reference to your last answer, and ask you if you would like to change your answer to the last question.

A. No.

Q. Referring, now, Mr. Coyne, to Respondent's Exhibit No. 21, in which you show expenses at the Port Huron plant, which I believe you have testified to be representative of similar costs at other plants.

How do you know that the Port Huron expenses are properly represented?

A. Only that these expenses as shown are actual expenses taken from our books and records.

Q. Did you make any survey of the other plants to determine whether Port Huron was representative or not, sir?

A. No actual survey.

Q. Based just on your judgment?

A. Based on our best judgment.

Q. And I believe you testified, Mr. Coyne, that the 50 per cent split figure there showing office manager 2934 $1,500 was an estimate based on your judgment?

A. That is correct.

Q. Mr. Coyne, referring now to Respondent's Exhibit No. 23, you show Salaries of Specialty Salesmen as $173,778.15, and expenses of these salesmen of $60,252.16.

Will you please explain the duties of these salesmen?

Mr. McBride: If the Examiner please, I object to that question. The duties of these salesmen, Specialty Salesmen has been explained by Mr. Peterkin, who has been subject to cross-examination on two occasions on that subject; and also to direct examination.

Like questions have been propounded to Mr. Stratford. This gentleman on the stand has not qualified himself as being in the sales department. The question is inappropriately put to this witness.

Mr. Haslett: Mr. Examiner, I feel that the testimony should be coupled in the cross-examination of this witness with these exhibits. He has come in here and testified as to these figures; and I think it is within the scope of the cross-examination to determine the source, the activity, the operations, and functions of these various people whose salaries have something to do with drawing up these arithmetical conclusions.

Trial Examiner Purcell: If he knows.

2935 Mr. Haslett: If he knows.

Trial Examiner Purcell: Objection overruled. Read the last question to the witness.

(The question above referred to was read by the Reporter.)

The Witness: The particular salesmen involved here are the Specialty or Retail Salesmen. Their names were furnished to me by Mr. Stratford as the only men that are involved in that particular type of sales promotion work.

By Mr. Haslett:

Q. Do you know what they do, sir?

A. I am not familiar with their duties.

Q. Do you know whether all of their time is devoted to this particular type of work?

A. I have been given to understand that it is.

Q. Do you know the type of work that they do, sir?

A. No, I don't.

Q. Mr. Coyne, do you presume to prepare these sheets, and ask the Commission to accept them as a cost justification, when you don't know what the activities of the various men whose salaries are represented on these documents are?

Mr. McBride: I object to that question. It is out of order as to what Mr. Coyne presumes to be.

Trial Examiner Purcell: Off the record.

(Discussion off the record.)

2936 Trial Examiner Purcell: On the record.

Objection overruled.

Mr. Haslett: Will you read the question?

(The question above referred to was read by the Reporter.)

The Witness: In preparing these exhibits, it is necessary that we consult with men in charge of our sales activities, so that we can draw off the expense and the salaries of the particular men that are involved in that type of work.

By Mr. Haslett:

Q. With whom did you consult?

A. In this instance, Mr. H. R. Stratford.

Q. What did he tell you about it, sir?

A. He listed these particular men that were involved in that particular type of work.

Q. Did he tell you what type of work they were involved in?

A. Specialty work.

Q. Did he define that, sir? Did he tell you what specialty work includes?

A. Yes, in the promotion of our Blue Can.

Q. What I am trying to find out about, Mr. Coyne, is the activity of a salesman whose salary is included under this heading, Salaries of Specialty Salesmen? I want to know what he does, what his various functions are?

2937 A. Solicits orders from the trade.

Q. What do you mean by the trade?

A. From the various retailers and wholesalers.

Q. And is that all you know about it, sir? Is that what he does, as far as you know?

A. Any other work that is in connection with the sale of our products.

Q. What would the other work be?

A. In building the various displays, and conducting sales programs in his particular vicinity.

Q. What type of sales programs?

A. Promotion of the Morton's products.

Q. Through what methods and means?

A. In contacting the trade, and using what advertising novelties that we have at his disposal.

Q. I believe you stated that he solicits orders from the retailers and wholesalers, is that correct, sir?

A. That is correct.

Q. Does he call on A. & P.?

A. He would not.

Q. He would not. What is the difference between the functions of the specialty salesman who solicits orders from retailers and wholesalers, and that of an ordinary salesman?

A. An ordinary salesman doesn't get into that type of work.

Q. He solicits orders from retailers and whole-
2938 salers, doesn't he?

A. But he has specialty men that work under his direction.

Q. The ordinary salesman has?

A. The ordinary carload salesman.

Q. Well, will you describe in your own language just what the ordinary salesman for the Morton Salt Company does?

A. Well, I have never travelled with a salesman, but I

imagine he solicits orders from all of the trade in his particular territory.

Q. Did you make any effort to determine the duties of an ordinary salesman, or the specialty salesman before you began the compilation of the figures that are shown on Respondent's Exhibit No. 23?

A. We determined the type of work that the various specialty men were doing, and consulted with Mr. Stratford and our executives before we went ahead with the schedule.

Q. That is just what I am trying to determine. You say you determined the type of work that specialty men were doing. Now, what did that investigation disclose? What were they doing?

A. It disclosed that they were doing the type of work which I have already mentioned.

Q. And will you distinguish between the activities of the specialty salesman, and that of an ordinary salesman?

2939 A. A specialty salesman's duties are more confined to the promotion of, to the promotional work of the Morton's Blue Can, and other table salt.

Q. And the ordinary salesman is what, sir?

A. His duty is to contact and sell the various wholesalers and jobbers, possibly with information developed from the efforts of the retail or specialty salesman.

Q. Did you get that information before you began the preparation of these various documents?

A. Yes.

Q. Will you tell me where in the documents are figures that show the salaries and compensation of the ordinary salesman?

A. The other salesmen are not included.

Q. Why not, sir?

A. We used only the promotional men.

Q. Why?

A. They are the ones that utilize all this advertising material, and things for the promotion of the Blue Can.

Q. Do you mean to say that an ordinary salesman doesn't do any advertising, point of sale advertising for the round package Blue Can salt?

A. That would be the duties of the specialty men.

Q. That is not the question, Mr. Coyne. I want to know if the ordinary salesmen do any point of sale adver-

2940 tising on the round package salt?

A. They may do some.

Q. Is that included in this figure, sir?

A. The advertising materials are included.

Q. Would the salaries of the ordinary salemen be included in this figure, that might do some of that advertising?

A. By ordinary salesmen, just to what do you refer?

Q. Any one except the specialty salesmen?

A. Their salaries would not be included.

Q. There is also a duplication of selling services, isn't there, sir?

A. I don't believe there would be.

Q. Do you mean to say that an ordinary salesman doesn't solicit orders from retails and wholesalers in the same manner, degree and form as the specialty salesmen?

A. The specialty salesman would work under his supervision, and turn over those particular orders to the carload man.

Q. But the ordinary salesman does solicit orders from retailers and wholesalers, isn't that true, sir?

A. No, his work is confined to the larger jobbers and wholesale and grocery houses.

Q. Did you assign any of the cost of the ordinary salesman soliciting business from the larger jobbers and wholesalers to any of the figures represented on these documents?

2941 A. No.

Trial Examiner Purcell: By these documents, what do you mean?

Mr. Haslett: I mean Respondent's Exhibits 17 to 27.

By Mr. Haslett:

Q. Why not, sir?

A. The figures for salesmen are only involved in Exhibit 23.

Q. And that would be for specialty salesmen only?

A. That is correct.

Q. And you didn't include the activities of any of the other salesmen?

A. No.

Q. Although they do function and operate in the same manner as the specialty salesman?

A. They do not function in the same manner as the specialty salesman.

Q. What governing factor was used in determining what activities would go into this figure, and what wouldn't go into it?

A. The governing factor would be the knowledge of our general sales manager, and the executives, as to what would go into this figure.

Q. How did you determine, Mr. Coyne, the class of
2942 activities and expenses that would enter into the compilation of these figures? What was the governing factor whereby some of these costs were included, and some were excluded?

A. Could I have the question read?

Trial Examiner Purcell: Read the question.

(The question above referred to was read by the Reporter.)

The Witness: The governing factor would be the knowledge of our executives and sales manager as to their particular duties.

By Mr. Haslett:

Q. Well, did you explore all of your selling costs?

A. Our executives and sales manager took all that into consideration.

Q. Did they make any actual survey to determine what it costs to sell various customers, as compared with other customers?

A. I couldn't answer that.

Q. Then you really don't know, Mr. Coyne, do you, why the specialty salesmen's salaries were included, and the ordinary salesmen's salaries were excluded, do you, sir, except the fact that you were told that by your executives?

A. Except the fact that these men who supervise that particular activity, and who are more familiar with their particular duties would know exactly what these men do.

2943 Q. I see. That would be based on their judgment, and not on any actual survey?

A. It would be based on their knowledge of the salt business.

Q. But their judgment, and their knowledge of the salt business, in relation to the separation of costs of the various salesmen, was not based upon an actual accounting survey, was it, sir?

A. I believe they could probably answer that question better than I.

Q. Mr. Coyne, you are the office manager and have these figures before you. You have prepared these various documents, and have been the moving factor in the preparation of this attempted cost justification. You would know that, wouldn't you, sir?

A. They may have some survey on their own that I wouldn't know about.

Q. As far as you know, they have never made any actual accounting survey, have they, sir?

A. Not to my knowledge.

Q. Isn't it a fact that the Morton Salt Company has never made a separation of selling costs, so far as you know, sir?

A. They may have, and I wouldn't know anything about it.

Q. I say, as far as you know.

A. As far as I know.

2944 Q. They have not, is that correct, sir?

A. That is correct.

Q. So you prepared these documents, Mr. Coyne, and included the costs that you were told to include, and you excluded the costs that you were told not to include, is that right, sir?

A. The costs that we determined were pertinent were included. The others were not.

Q. Who told you, sir? Who determined it, when you say "we"?

A. Our executives.

Q. Was it your responsibility, or the executives' responsibility?

A. The executives' responsibility.

Q. So you were told what costs to include in these documents, and you were told what cost to exclude, isn't that true, sir?

A. Insofar as the carload, or other types of salesmen were concerned, that was more to the judgment of our executives, as to what should be done there.

Trial Examiner Purcell: We seem to be wasting a lot of time.

Mr. Haslett: Yes, I want him to answer the question.

Trial Examiner Purcell: If you please, Mr. Haslett.

Read the last question to the witness, Miss Reporter,
2945 and the Examiner instructs the witness to answer.

(The question above referred to was read by the Reporter.)

Mr. McBride: - Will you read the answer, also, to that question?

(The answer above referred to was read by the Reporter.)

Trial Examiner Purcell: The idea of the Examiner is that the answer is not responsive. Counsel for the Commission has put the same question on several occasions in various forms, and attempted to elicit a direct answer.

The witness is instructed to answer the question. It is perfectly plain. Say yes, or no, and if you want to explain it, I shall accord you the opportunity. Now, re-read the question, please.

Mr. McBride: Just one moment, Mr. Examiner. May I suggest this. Following Mr. Haslett's questions, the last several ones, I haven't been sure in my own mind whether he is confining his question regarding the determination of inclusion or exclusion of costs to the specialty salesman angle, or whether he has reference to all costs, and I think the witness in his last answer segregated it for that very reason. I think it is responsive.

Trial Examiner, Purcell: No, I think Mr. Haslett's line of cross-examination is very clear, at least, to my
2946 mind. Don't let us confuse the matter. Read the question back to the witness.

(The question above referred to was re-read by the Reporter.)

The Witness: Yes, but as I previously explained, our executives and sales manager are fully aware of the duties of the men under their particular charge. They would know what costs are involved.

By Mr. Haslett:

Q. How do you know that they would know what costs would be involved?

A. They are very capable men in my judgment. They understand the salt business.

Q. It is just your opinion, isn't it, Mr. Coyne?

A. It is as good as any.

Q. I say, it is just your opinion?

A. Yes.

Q. Then in the preparation of the documents, Mr. Coyne, you did use some selling costs, didn't you, sir?

A. The salaries of the specialty men.

Q. I say, you did use some selling costs, didn't you?

A. Their salaries.

Q. Would that be a selling cost?

A. It would be their salaries.

Q. And you didn't use other selling costs, did you, sir?

2947 A. We used only the specialty salesmen's salaries.

Q. Mr. Coyne, all I want is just a yes or a no answer, and afterwards you can make any explanation you like, and I think it would work for much more clarity in the record, and so that the Commission can determine the true facts in this case, all I want you to do is answer me yes or no on these questions, and then make your explanation.

You did some selling costs, didn't you, sir?

A. Yes, the salaries and expenses of the specialty salesmen.

Q. And you did not use other selling costs, did you, sir?

A. Only those.

Q. So you didn't use the salaries and expenses of other types of salesmen, did you, sir?

A. No, sir.

Q. Now, Mr. Coyne, do you know what were the governing factors used in establishing a line of demarcation as to which costs to use, and which costs not to use?

Answer that just yes or no, and then make your explanation, sir.

A. Yes, the advice and counsel of our executives and general sales manager.

2948 Q. Is that the only measuring factor or governing factor that you had, sir?

A. That is right.

Q. Mr. Coyne, isn't it a fact that the primary measuring factor used in the preparation of Respondent's Exhibits 17 to 27, inclusive, was the number of invoices, as portrayed and summed up by Respondent's Exhibit 24?

A. Number of invoices and their total sales.

Q. Well, the number of invoices was the measuring factor, wasn't it, sir?

A. It is one factor.

Q. That is the only factor that was used. I mean the

other conclusions were drawn from mathematical computations?

A. From the number of invoices used as a measuring factor.

Q. The total sales is a fact drawn from the books, isn't that correct, sir?

A. That is correct.

Q. So the only measuring factor that you had there would be the number of invoices?

A. The various classes of customers.

Q. I mean did you have the same average cost per invoice for every customer that you had? You did, didn't you, sir?

A. Base figure, yes.

Q. Mr. Coyne, will you tell me, please, exactly what cost analyses, time studies, or other studies you have
2949 made to substantiate the number of invoices as being a proper measuring factor for the preparation of your costs, as reflected in Respondent's Exhibit 24?

A. Our examination of the invoices issued during the period in question.

Q. Is that the only one, sir?

A. Yes.

Q. And when you say "examination", what do you mean?

A. Tabulation.

Q. Just the adding up of the invoices?

A. Summing up as to the various commodities.

Q. Applicable to each of the discount customers or carload customers?

A. The various classes, yes.

Q. Is that as far as you went in your cost study and analysis?

A. Examination of the invoices issued during that period together with other things as mentioned in these various other exhibits.

Q. And that resulted in the measuring factor of invoicing?

A. Yes.

Q. What I mean, Mr. Coyne, is this: You determined at the outset that the measuring factor to be used would be the number of invoices?

A. The number of invoices and our cost for issuing
2950 those invoices.

Q. And you elected to use that measuring factor at the outset of the attempted cost justification?

A. Yes.

Q. Before you made any tabulations of any kind, is that correct, sir?

A. That was our method of approach.

Q. And you followed that method right on through, didn't you, sir, as reflected in Respondent's Exhibit No. 24?

A. Yes.

Q. Mr. Coyne, do you know of any expert accountant who had advocated such a procedure?

A. No.

Q. Mr. Coyne, will you refer to Respondent's Exhibit No. 24 and tell me the maximum cost for the issuing of an invoice on a carload customer, issued by the Morton Salt Company?

A. You mean per invoice?

Q. Per invoice, the maximum cost.

A. $3.63¼.

Q. Per invoice?

A. Per invoice.

Q. I believe, Mr. Coyne, that Mr. Peterkin testified on cross-examination yesterday that the credit memorandums were taken into consideration in arriving at the 2951 average invoice cost of $2.65¼, is that correct?

A. They would be considered.

Q. They would be considered as an invoice?

A. They would not.

Q. What would they be considered as?

A. In our invoicing operation.

Q. Well, would it cost just as much to issue a credit memorandum as it would an invoice?

A. That would be considered in our invoicing operations, as part of our credit cost.

Q. In the figure opposite "Carload Customers" on Respondent's Exhibit 34, showing 97,827, did that figure include the issuance of credit memorandums?

A. That includes only the number of invoices.

Q. No credit memorandums?

A. No credit memorandums.

Q. Where are the credit memorandums included, sir?

A. They would be included with the figures under office salaries in the credit department.

Q. What exhibit are you looking at?

A. Exhibit No. 26.

Q. Referring, now, to Respondent's Exhibit No. 22, Mr. Coyne, and calling your particular attention to the last item appearing on that document, "Credit cost per invoice", then in parentheses, $40,295.97 divided by
2952 97,827, do you see that document, sir? Do you find that figure?

A. $40,295.97, yes.

Q. Divided by 97,827.

Are the number of credit memorandums included in the computation of the figure 41 cents, where it is divided by 97,827, Total invoices to carload customers? Would that figure include the credit memorandums?

A. It would include the salaries of the clerks in our credit department who had prepared credit memorandums.

Q. And you applied that to the invoices and not the credit memorandums, is that correct, sir?

A. It is all applied to the invoices.

Q. Well, does the figure 97,827, Total invoices to carload customers, include the credit memorandums that are sent to the various customers?

A. It includes all credit operations, so far as these carload customers are concerned.

Q. That is not responsive, Mr. Coyne.

Mr. Haslett: May I move to strike that last answer?

Trial Examiner Purcell: Give me the question and the answer, please, Miss Reporter.

(The question and answer above referred to were read by the reporter.)

Trial Examiner Purcell: Let the answer be stricken.
2953 Do you understand the question, Mr. Coyne?

The Witness: May I have it reread?

(The question above referred to was read by the reporter.)

A. Yes, but the credit memorandums would be prepared by those individuals in the credit department expense.

Mr. Haslett: Mr. Examiner, I will have to move to strike that answer again.

By Mr. Haslett:

Q. I am asking you in very plain and simple language whether the total invoices to carload customers includes these memorandums, little memorandums, as an invoice or as a credit memorandum, if that figure includes them.

A. And I have told you that this figure covers the number of invoices issued and does not cover the number of credit memorandums issued.

Mr. Haslett: That is all I wanted to know.

Trial Examiner Purcell: We will recess for five minutes.

(A short recess was taken.)

Trial Examiner Purcell: Recess is over.

Mr. McBride: Mr. Examiner, pursuant to discussion with counsel for the Commission off the record, I can state for the record that the fiscal year at the Morton Salt Company is the calendar year.

2954 Mr. Haslett: That is a regular accounting period?

Mr. McBride: It is, and has been at all times during the period covered by any exhibits, and still is.

Mr. Haslett: Mr. Examiner, in view of the fact that Mr. Peterkin has testified on cross-examination that it was his sole responsibility for the factors in the preparation of these documents, and particularly Respondent's Exhibit 24, and the fact that there was no thorough cost study made in connection with the preparation of these documents and that all costs were not explored, and because of the fact that Mr. Connor was only concerned in the preparation of Respondent's Exhibits 25, 26, and 27, which are figures taken from the books and records of the Morton Salt Company which have been made available to the Commission for checking purposes, and because Mr. Connor has not been concerned in any way in the preparation of Respondent's Exhibit 24, other than the preparation of Exhibits, Respondent's Exhibits 25, 26, and 27, in view of those factors, I have no cross-examination of Mr. Connor.

Trial Examiner Purcell: Let the record so show.

Off the record.

(Discussion off the record.)

Trial Examiner Purcell: On the record.

Mr. McBride: I would simply like to note an exception to counsel's characterization as to what has or what

2955 has not been done. The record stands for itself on that and I think it should not be characterized in counsel's statement as to whether or not such studies have or have not been made. That will appear from the record itself.

Mr. Haslett: Any statement that I made couldn't alter the testimony in the record, but that is just a summation of what I feel is in the record.

Trial Examiner Purcell: Let Mr. McBride's objection be noted. Let the statement of Mr. Haslett stand as made. Proceed with the examination.

By Mr. Haslett:

Q. Mr. Coyne, will you refer to Respondent's Exhibit No. 24 and tell me the minimum cost per invoice that is shown on that exhibit?

A. $3.22½.

Q. And so the minimum cost would be $3.22½ and the maximum cost would be $3.63½, is that correct, sir?

A. That is correct.

Q. Mr. Coyne, will you state what offices of the Morton Salt Company are used to bill the Kroger Grocery and Baking Company, for its purchases of Morton's salt?

A. Chicago, Kansas City, St. Louis, Minneapolis, and Milwaukee.

Q. Now, will you state what offices were used by the Morton Salt Company to bill Creasey Corporation?

2956 A. Chicago only.

Q. Chicago only?

A. Yes.

Q. And the Safeway Corporation?

A. Chicago, Kansas City, San Francisco, and I believe Dallas.

Q. Mr. Coyne, are there associated offices with the Kansas City office?

A. They would have no other billing office.

Q. Do they have any other type of office associated with them operated by the Morton Salt Company?

A. Sales offices.

Q. But no billing offices?

A. No billing.

Q. Is that true of Dallas?

A. Yes.

Q. How about San Francisco?

A. The same would be true of San Francisco.

Q. They don't have a billing office at Los Angeles?

A. They do not.

Q. Now, will you tell me what offices were used by the Morton Salt Company to bill National Retailer-Owned Grocers' various outlets?

A. Chicago, Kansas City, Minneapolis, Milwaukee, St. Louis, and Detroit offices.

2957 Q. And will you tell us what offices were used for the C. D. Kenny Company for billing purposes?

A. Kansas City, Chicago, Detroit, St. Louis, and New Orleans, up until the time the C. D. Kenny Company closed that branch.

2958 ARNOLD J. COYNE, resumed the stand and testified further as follows:

Cross Examination (continued).

By Mr. Haslett: Mr. Examiner, I would like for the record to show that Mr. McBride has furnished me with copies of the invoices that I requested in my examination of Mr. Coyne yesterday and these invoices have been examined, and I have selected a few and have returned the balance to Mr. McBride, and I have agreed with Mr. McBride to stipulate as to the identity of the documents to be marked as Commission's Exhibits, so what I will do now is to hand this document to the reporter and ask her to mark it for identification as Commission's Exhibit 192.

(The document referred to was marked Commission's Exhibit 192 for identification.)

Mr. Haslett: Mr. McBride, am I correct when I state that the document marked for identification as Commission's Exhibit No. 192 is a true and correct copy of the

2959 invoice from the Morton Salt Company, under date of January 31, 1941, numbered 3869, and directed to the Supreme Wholesalers Cash Grocery Company, New Orleans, Louisiana?

Mr. McBride: That is correct.

Mr. Haslett: Mr. McBride, is it also stipulated that, without any prejudice to the cross-examination of this witness, the counsel for the Commission may offer the document marked for identification as Commission's Exhibit No. 192 in evidence?

Mr. McBride: No objection.

Mr. Haslett: I offer the document, Mr. Examiner.

Trial Examiner Purcell: Any objection to the introduction in evidence of the document?

Mr. McBride: No, no objection.

Trial Examiner Purcell: There being none, the re-

porter will receive the document described and mark it as Commission's Exhibit 192 in evidence.

(The document referred to, heretofore marked for identification COMMISSION'S EXHIBIT 192, was received in evidence.)

Mr. Haslett: Miss Reporter, will you mark this for identification as Commission's Exhibit No. 193?

(The document referred to was marked Commission's Exhibit 193 for identification.)

Mr. Haslett: Mr. McBride, is it stipulated between counsel for the respondent and counsel for the Com-
2960 mission that the document marked for identification as Commission's Exhibit No. 193 is a true and correct copy of the invoice numbered 3736, passing between the Morton Salt Company and the Supreme Wholesale Cash Grocery Company, under date of January 11, 1941?

Mr. McBride: That is correct.

Mr. Haslett: May we have the same stipulation as to the offering of the document?

Mr. McBride: That is right.

Mr. Haslett: I offer the document, Mr. Examiner.

Trial Examiner Purcell: Any objection?

Mr. McBride: No objection.

Trial Examiner Purcell: Hearing none, it is ordered that the document described shall be marked by the reporter as Commission's Exhibit No. 193 in evidence.

(The document referred to, heretofore marked for identification COMMISSION'S EXHIBIT 193, was received in evidence.)

Mr. Haslett: Miss Reporter, I hand you a document and ask that you mark it for identification as Commission's Exhibit 194 for identification.

(The document referred to was marked Commission's Exhibit 194 for identification.)

Mr. Haslett: Mr. McBride, am I correct when I state it is stipulated between counsel in this proceeding
2961 that the document marked for identification as Commission's Exhibit No. 194 is a true and correct copy of an invoice numbered 7832, passing between the Morton Salt Company and Max Bressler, Inc., of New Orleans, Louisiana, under date of May 21, 1938?

Mr. McBride: That is correct.

Mr. Haslett: May we have the same stipulation as to offering the document?

Mr. McBride: Yes.

Mr. Haslett: I offer the document, Mr. Examiner.

Trial Examiner Purcell: Any objection?

Mr. McBride: No objection.

Trial Examiner Purcell: Hearing none, the reporter will mark the described document as Commission's Exhibit No. 194 in evidence.

(The document referred to, heretofore marked for identification COMMISSION'S EXHIBIT 194, was received in evidence.)

Mr. Haslett: Miss Reporter, I hand you a document and ask you to mark it for identification as Commission's Exhibit 195.

(The document referred to was marked Commission's Exhibit 195 for identification.)

Mr. Haslett: Mr. McBride, am I correct when I state
that it is stipulated by and between counsel for the
2962 respondent and counsel for the Commission that the
document marked for identification as Commission's Exhibit No. 195 is a true and correct copy of the invoice numbered 8088, passing between the Morton Salt Company and Nicholas Camarata & Company, of New Orleans, Louisiana, on the date of July 11, 1938?

Mr. McBride: That is correct.

Mr. Haslett: May we have the same stipulation as to this document as we have had to the other four documents?

Mr. McBride: Yes.

Mr. Haslett: I offer the document in evidence, if the Examiner please.

Trial Examiner Purcell: Any objection?

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the document described will be received in evidence and marked by the reporter as Commission's Exhibit 195.

(The document referred to, heretofore marked for identification COMMISSION'S EXHIBIT 195, was received in evidence.)

Mr. Haslett: Mr. Examiner, I would like to note for the record that Commission's Exhibits Nos. 192, 193, 194, and 195 have the address of the Morton Salt Company at 310 South Michigan Avenue, Chicago, Illinois.

These exhibits are practically identical with the
2963 Morton Salt Company's invoice from the New Orleans
office, except for the fact that the New Orleans address appears on the invoice instead of the address of the

principal office and place of business of the Morton Salt Company.

Trial Examiner Purcell: It is so noted.

Mr. McBride: Not practically identical, but identical in full, except for that one exception.

Mr. Haslett: That is correct.

By Mr. Haslett:

Q. Mr. Coyne, I hand you now Commission's Exhibit No. 192 and ask you to state whether the figures that appear on this invoice were included in the compilation of Respondent's Exhibits 17 to 27, inclusive.

A. They were not included.

Q. Mr. Coyne, in the compiling of Respondent's Exhibits 17 to 27, inclusive, will you state whether or not there were any invoices included in the compilation that reflected sales which are similar to and in the approximate amount of the sales that appear on Commission's Exhibit 192, which I hand you herewith.

A. It is quite possible that there were.

Q. Now I show you Commission's Exhibits 193, 194, and 195 and ask you if the same answer would apply to those three exhibits as you stated in regard to Commission's Exhibit 192, in response to the same question, of course.

2964 A. The answer would be the same.

Q. Mr. Coyne, I believe you stated this morning that your minimum cost for invoicing a single invoice would be $3.22½ and the maximum cost would be $3.63½, according to your calculations. Is that correct, sir?

A. That is correct.

Q. Then if there were any invoices included in the period of September 1, 1939, to August 31, 1940, similar to Commission's Exhibit 195, the cost would far exceed the price of the commodity that appears thereon, isn't that true, sir?

A. Yes.

Q. And the same would be true as to Commission's Exhibits 192, 193, and 194, is that correct, sir?

A. Yes.

Mr. Haslett: May we have a moment for recess, please?

Trial Examiner Purcell: We will have a short recess.

(A short recess was taken.)

Trial Examiner Purcell: Proceed.

2965 Mr. Haslett: Mr. Examiner, in accordance with my reservation, I now move to strike from the record Respondent's Exhibits 17 to 27, inclusive, and all testimony in connection therewith.

These exhibits have been offered by the Respondent in an effort to establish that the difference in prices for salt charged by the Respondent, predicated upon the so-called quantity discount basis, makes only due allowances for differences in the cost of sale resulting from the differing methods and quantities in which the salt is sold.

It is contended that these exhibits are defective, insufficient, incomplete, and incompetent for the purpose of establishing a cost justification of Respondent's price differentials.

The exhibits, and I speak with special reference to Respondent's Exhibit 24, which is a summary of the results shown by the other exhibits, reflect wholly and entirely the results of estimates and guesses of what it costs to serve the separate groups of customers who purchase salt under different price scales.

The costs have been separated on the basis of numbers of invoices required in the billing of salt to the separate groups of customers. There is nothing in these records which will show that the Respondent has ever made any cost studies and analyses which will substantiate the
2966 measuring factor here used, that is, the numbers of invoices, as being sound and accurate and proper, or that its use affords accurate results in the separation of the costs used.

The measuring factor is nothing more or less than estimates based upon no factual study or analysis of any kind. This has been admitted in this record by Mr. Peterkin, the president of the Morton Salt Company.

The record will show also, by testimony of Mr. Peterkin, that all of the distribution costs of Morton Salt Company have not been explored, and separated, and that the costs omitted from the calculations submitted in the attempted cost justification would have a material bearing on those calculations; therefore, the calculations are incomplete, incompetent, and insufficient to prove or disprove anything respecting the issues involved in this case.

A further objection to the Company's attempted cost justification, which is embodied in Respondent's Exhibits 17 to 27, inclusive, is that certain costs applicable to selling

activities of the Kansas City, Dallas, and San Francisco branches have been included in the costs on which the Company assumes to prove a justification of sales in other districts.

In other words, the sales in the three western branches were excluded, but part of the costs applicable there-
2967 to were included in the attempted cost justification.

This is absolutely unsound, and for that one point alone would serve to nullify the results of the cost figures which are summarized on Respondent's Exhibit No. 24; therefore, the Respondent's Exhibits 17 to 27, inclusive, are further made incompetent, incomplete, and insufficient to prove or disprove any cost justification in the territory selected by the Respondent, on which it bases its calculations.

Furthermore, the method of accounting used by the Respondent in separating its so-called invoice expense for the Port Huron plant is not based upon any kind of a cost study or analysis, or factual data of any kind whatsoever, other than the total costs of certain items selected for the calculations.

In the final analysis, the costs reflected on Respondent's Exhibit No. 24, which is a summation of the cost separations as shown on the other exhibits already identified, represent unsupported estimates, and are of no evidentiary value whatsoever, and should be stricken from the record as being insufficient, incompetent, and incomplete, as they do not prove or disprove justification of the respective price differentials under which the Company sells its products.

Furthermore, the estimated cost calculations were made by and under the supervision of witnesses advanced
2968 by the Respondent, who, by their own testimony, have admitted not being properly qualified accountants, and without consultation with competent accountants or benefit of their opinion.

For all these reasons, your Honor, and for the additional reason that the documents are immaterial and irrelevant to the issues in this case, I move that Respondent's Exhibits 17 to 27, inclusive, constituting the Respondent's attempted cost justification for its price differentials, be stricken from the record.

I think it is clearly insufficient to sustain Respondent's burden of proof, but, in addition to that, I do not really

believe it is proper evidence in support of the purpose for which it was submitted.

Mr. Examiner, with the statement that I have just made for the record, I have concluded by cross examination of Mr. Coyne, which statement, of course, was my motion to strike Respondent's Exhibits 17 to 27, inclusive, and all the testimony in connection therewith.

Trial Examiner Purcell: Note a five minute recess for the convenience of counsel for the Respondent to consult with his witness.

(A short recess was taken.)

Trial Examiner Purcell: The recess is over.

Mr. McBride, you have heard the presentation of
2969 Mr. Haslett's motion to strike, and his announcement at the conclusion of his cross examination of this witness.

There are several procedural matters which present themselves to my mind, one of which is, what is your disposition with regard to your redirect examination of the witness Coyne?

Mr. McBride: I have no redirect, Mr. Examiner.

Trial Examiner Purcell: Under the circumstances, and due to the importance of the motion, not only to the Commission, but to the Respondent, and also to the Examiner, and in order that the Respondent may be given a full opportunity to read the record in this case, on which he is getting daily copy, and thoroughly digest the motion as presented, and the various grounds upon which it is predicated, I am going to declare an adjournment of this hearing at this time, 3:15 o'clock p. m., until tomorrow morning at ten o'clock in this room, Number 103, Hotel Sherman, Chicago, Illinois, at which time the order of procedure will be for the Examiner to listen to the argument in opposition to the motion off the record, and to accord to the attorney for the Respondent access to the record for the purpose of presenting his grounds of opposition without argument, in accordance with Rule 17 of the Commission's Rules of Practice.

(Whereupon, at 3:15 o'clock p. m. of Tuesday, October 20th, 1942, the hearing in the above-entitled matter was adjourned until 10:00 o'clock a. m. Wednesday, October 21st, 1942.)

2970

Room 103-104, Sherman Hot
Chicago, Illinois,
Wednesday, October 21, 19

Met, pursuant to adjournment, at 10 a. m.

Before:

James A. Purcell, Trial Examiner.

Appearances:

John T. Haslett, Esq., Attorney for Federal Trad Commission.

L. M. McGuire, Esq., 310 South Michigan Avenue, Chicago, Illinois, attorney for respondent.

2971

PROCEEDINGS.

Trial Examiner Purcell: This is a reconvening of agreement and notice of Federal Trade Commission hearing, in re Morton Salt Company, No. 4319, at Chicago, Illinois, 10 o'clock a. m. the 21st day of October, 1942, in Hearing Room No. 103-104, Sherman Hotel.

The reporter will note the presence of counsel for both the Commission and the respondent.

You may proceed.

Mr. McBride: Off the record.

Trial Examiner Purcell: Off the record.

(Discussion off the record.)

Trial Examiner Purcell: On the record.

Let the record show that counsel for the respondent has requested his entire statement to be on the record and, because of the gravity of the question to the respondent, the Trial Examiner has accorded respondent the privilege of the record in order that his views may be presented to the Commission.

Mr. McBride: Mr. Examiner, counsel for the Commission has moved to strike Respondent's Exhibits Nos. 17 to 27, inclusive, and in giving reasons for his motion, those reasons may be generally described as applying to the propriety or completeness of the cost justification presumably presented by those exhibits and by the oral

2972 testimony pertinent thereto.

My first point in opposition to the motion is that

Respondent's Exhibit 17 is not a cost exhibit and that no testimony offered in connection with Respondent's Exhibit 17 has to do with the question of costs.

The exhibit was prepared, tendered, and testified to and admitted in evidence on the grounds that it showed, or tended to show, non-injury to competition with regard to carload discounts. There are no cost figures of any kind or description on Respondent's Exhibit 17 and, inasmuch as the motion to strike made by counsel for the Commission was devoted entirely to the cost evidence, I take it that the motion is not applicable and cannot be maintained or sustained with respect to Respondent's Exhibit 17.

For the balance of my particular statement that I am now making, I will be referring to Respondent's Exhibits 18 to 27, inclusive, and will not be in any way referring to Respondent's Exhibit 17.

As to Respondent's Exhibits 18 to 27, inclusive, and the oral testimony pertinent thereto, counsel's contentions can be summarized as follows:

(a) That the figures and factors contained in Respondent's Exhibits 18 to 27, inclusive, are based on guesses and estimates and are not based on a factual study.

(b) That there is no evidence in the record to
2973 show that the particular cost analysis submitted by the respondent, namely, a segregation of costs, in terms of invoicing procedure, by way of a brief description of the cost analysis submitted, is a sound, accurate, or proper cost analysis.

(c) That other costs of the respondent, exclusive of those segregated in terms of the invoicing procedure, were not taken into consideration by respondent in preparing the cost study submitted.

(d) That certain costs appropriate to the San Francisco, Kansas City, and Dallas offices of the respondent were included in the cost analysis submitted, whereas, the sales of customers billed out of those offices were not included in the cost analysis.

(e) That the witnesses of the respondent having to do with the cost analysis, and here reference is made presumably to Mr. Coyne, Mr. Connor, and Mr. Peterkin, were not competent witnesses in that they were not qualified accountants, and that there is no evidence that expert accountants were consulted by any of those three witnesses or by any other person of the Morton Salt Company in preparing the cost analysis submitted.

(f) That the exhibits, meaning 18 to 27, and the oral testimony pertinent thereto, is defective, insufficient, incomplete, and incompetent.

2974 (g) That the cost analysis in its entirety is immaterial and irrelevant to the issues of this case.

So nearly as the motions and the reasons can be studied, the outline of the reasons just stated encompassed all reasons in support of the motion.

The first important point in support of the respondent's opposition to the motion is that the sole issue before the Trial Examiner at this moment is that of the admissibility of the evidence, and there is not, and cannot be before the Trial Examiner at this time, or at any other time, the question of the sufficiency and weight of the cost evidence submitted.

The question of sufficiency and weight, insofar as the Federal Trade Commission and its staff are concerned, is within the prerogatives of the Commission itself, so we have before us now only the very narrow issue of admissibility.

In considering that issue, attention is called to the terms and provisions of the Robinson-Patman Act, having to do with cost justification. That Act does not specify the nature of the cost analyses to be presented; it does not specify by whom it shall be presented or made; in fact, it does not specify anything other than that a cost justification may be submitted, and that thereby raises the issue of one of the defenses in this case.

2975 It will be observed that all the respondent's exhibits 18 to 27, inclusive, and all testimony pertinent thereto have to do with nothing other than costs, and the evidence and the testimony was offered in connection with the issue of a cost justification. That is tacitly, in fact, expressly admitted in the wording of the motion to strike.

Counsel for the Commission repeatedly refers to costs, and his argument in general and in particular is confined entirely to his judgment or appraisal as to the sufficiency or completeness of the cost data submitted.

In effect, then, the argument of counsel for the Commission in support of his motion to strike is directed not to the admissibility of the evidence but to the competency or sufficiency or weight of the evidence. Therefore, strictly speaking, there would be no further need for counsel for the respondent to discuss the reasons upon which the motion to strike was predicated.

However, waiving that fact and discussing the reasons in terms of the merits, the analysis would be approximately as follows:

First, with respect to item (a) in the outline above, in which the statement by counsel for the Commission is made to the effect that the figures and factors used are based on guess and estimates, there is no evidence and apparently
no attempt on the part of counsel for the Commission
2976 to show or to assert that the factors employed and
the figures used are not true and correct figures from the books and records of the Morton Salt Company. The efforts of counsel have been directed entirely to their adequacy or completeness and not to the accuracy of those that are used.

Exhibit 18 contains nothing but tabulations from the records. There are no guesses, estimates, or averages on that exhibit. The same is likewise true of 19. The same is likewise true of 20-A and 20-B.

Exhibit 21 contains precisely one estimate and that is the amount of the salary of the office manager to be included. It does contain an average figure computed in the manner shown, but it is not a guess or estimate. The average is based on figures from the records of the Morton Salt Company.

Exhibit 22 contains no guesses or estimates, but actual figures, and while it does contain an average figure, it is predicated on true figures from the records of the Morton Salt Company.

The same may be said with respect to Respondent's Exhibit 23.

The same may also be said of Respondent's Exhibit 24, and that exhibit, not containing guesses or estimates, does contain averages computed in the manner shown, on the
basis of true figures and factors from the records of
2977 the Morton Salt Company.

The same is true with respect to 25, with the exception of the allocation of rent, and the testimony shows the basis on which that 50 percent allocation was made. Also on 25, 26, and 27, a factor of 3.91 percent for social security is used, which is an average computed on a formula basis. All other figures are true and correct figures from the Morton Salt Company records.

This must be remembered, notwithstanding the fact that counsel may in his opinion adjudge those figures incomplete or perhaps inaccurately employed, without granting

that that is the fact, but the figures and factors themselves are not susceptible to the characterization of being guesses or estimates, except insofar as particularized in the immediately preceding statement.

With respect to reason (b) outlined above, namely, that there is nothing to show that this particular cost analysis is the best one and that other possible cost analyses might not be as good, I take it that as a matter of the law of evidence, no party to litigation, be he plaintiff, or be he defendant, or be he the Commission or the respondent, need prove a fact both affirmatively and negatively.

In essence, counsel for the Commission is criticising the cost analysis on the basis that while a cost analysis on
invoicing is presented, evidence was not submitted
2978 negativing the fact that there might be other possible types of cost analyses which would more clearly show a cost justification. It is within the scope of counsel for the Commission's prerogatives to show that perhaps this is not the best one or that it even might be the worst one, by rebuttal testimony.

With respect to item (c), counsel states as his reason that other costs, aside from invoicing procedure, were not taken into consideration. That is contrary to the fact because both Mr. Peterkin and Mr. Coyne testified that other costs were taken into consideration. The most that can be said on this score is that they may not have taken the costs into consideration in the manner and to the extent, and, without conceding the fact, perhaps with a thoroughness or in the fashion that counsel for the Commission himself might have done, but that does not negative the fact that in the judgment of those men other costs were not to be included in this analysis, and their reasons appear in the record.

As to item (d) above, it is true, as counsel points out in his reasons in support of his motion, that certain costs applicable to the San Francisco, Dallas, and Kansas City were included, but as to this reason it should be observed that the only two items in all the exhibits where this ap-
peared to be are the two items on Respondent's Ex-
2979 hibit 22, being traffic expense and tabulating expense, the first item being in the amount of $3,252.86 and the second item being in the amount of $5,347.08, and it is also true that respondent did not take into its cost analyses sales made on billings out of those three offices.

The reason why the small portion of expenses for those three offices was included in those figures appears on the record. It should also be observed, as to the propriety of this motion, that both items could be dropped completely out of the cost analyses in their entirety without making a difference of any significance except in the third decimal point of the average based on those figures.

As to all other figures and all other exhibits, there is literally no evidence on the inclusion of costs from those three offices.

2980 As to item (e) above, that the witnesses, namely, Mr. Coyne, Mr. Connor, and Mr. Peterkin were not qualified accountants for preparing cost analyses, and admitted that they had not consulted with so-called qualified accountants on cost analyses in connection with preparing the cost analyses submitted by the Respondent here, it should be observed again that the Robinson-Patman Act does not require that cost analyses be presented by an accountant, be he expert or otherwise, by an economist, by an attorney, or by a ditch digger. It simply appears that a cost justification can be presented, and it does not at all follow that these gentlemen, having an aggregate of some sixty years in the salt business, are not competent to reflect costs on their own records, and it remains for the Commission to determine whether or not they have presented an adequate cost justification.

Finally, as to (f) and (g), that the evidence is defective, insufficient, incomplete, and incompetent, I take it that those are general legal words by way of conclusions used by counsel, and that they are not supported only by the particular reasons previously considered.

As to item (g) above, that the evidence is immaterial and irrelevant, it is quite obvious that so long as the evidence pertains to cost justification, be it good, bad, or indifferent, and however characterized by counsel for the Commission, the evidence is material and relevant to the

2981 issue of cost justification, and it remains for the Commission alone to determine its sufficiency and adequacy.

Trial Examiner Purcell: Mr. McBride, have you completed your statement, sir?

Mr. McBride: I have.

Trial Examiner Purcell: Are you satisfied with the time that has been given to you by the Examiner for the presentation of your views?

Mr. McBride: I am.

Trial Examiner Purcell: Now, gentlemen, from the time of the introduction of Respondent's Exhibits Numbers 17 to 27, inclusive, I have anticipated the making of this motion by the attorney for the Commission. I have, therefore, given long and careful consideration to the question.

In granting the motion, as I now do, I am fully aware of the effect, that is, that I cut from under the Respondent a very carefully prepared assumed defense. I cannot do this lightly, or without weighty reasons. The Respondent may argue, and not without merit, that it is entitled to present its defense, be it what it may, in the manner it sees fit, and without dictation, and that it is prepared to sink or swim on the sufficiency thereof. Further, that it is entitled to its day in court under the due process of law theory, and that its day in court does not mean a
2982 hearing before an Examiner or other lesser official, but a hearing on the merits before the Federal Trade Commission, which is the forum of first instance, and the only body at this juncture empowered to make a finding on the issues here involved.

The natural corollary of this argument is that the Examiner, by granting the motion to strike, is, in effect, usurping the Commission's prerogative, and violating the Respondent's rights by making what is in effect a finding on the merits.

No attempt is here made to make any finding upon the weight to be accorded the questioned exhibits, but only upon their admissibility as genuine grounds of defense, sufficient to bear the burden of proof cast upon the Respondent under the Act. In this connection, let me quote Section 2-B of the Clayton Act, as amended:

"Upon proof being made, at any hearing on a complaint under this Section, that there has been discrimination in price or services or facilities furnished, the burden of rebutting the prima facie case thus made by showing justification shall be upon the person charged with a violation of this Section, and unless justification shall be affirmatively shown, the Commission is authorized to issue an order terminating the discrimination."

A perfectly fair and logical interpretation of the
2983 foregoing means simply that the Commission needs only show a discrimination on the part of the Respondent, whereupon a prima facie case is made, and the

burden of proof showing justification or any other defense, is immediately shifted to the Respondent, and there the burden rests until such time as the Respondent, by a preponderance of the evidence in its behalf, shifts the burden again back to the Commission in order to rebut a defense adequately made out.

Personally, I do not subscribe to the expressed theory of some that the burden, having shifted by the expressed language of the Act, never again reverts to the Commission. I lean to the more equitable view that each party should bear its burden as the scales shift.

There can be no question that the Commission has borne its initial burden, and made out its prima facie case in the instant matter. Some 2300 pages of testimony of the Commission's Case in chief are replete with examples of preferential discounts, rebates, and so-called "competitive adjustments" on the part of the Respondent. The explanation and justification of these instances remain the burden of the Respondent.

At this point, it might be apropos to point out that these exhibits were admitted in evidence over the serious protests of the attorney for the Commission, and only for two reasons: First, because of the desire of the
2984 Examiner to accord to the Respondent every facility for the presentation of its defense, and, secondly, because the Examiner, at the time of introduction, had no means of ascertaining whether or not the Respondent would be able to prove up the various documents by competent, relevant, and persuasive evidence. This latter, to the mind of the Examiner, the Respondent has wholly failed to do.

With the foregoing in mind, that is, that the Commission has made out a prima facie case that the Respondent, according to the views of the Examiner, has not successfully rebutted, it would be obviously unfair to the Commission to permit the exhibits in question to stand as such, and thus be put to the expense of disproving the factual and conjectural matters and inferences contained in the many exhibits. Such a situation would be, in effect placing the Commission in a defensive position where it does not rightfully belong.

Throughout the proceedings, as the record will disclose, I have been exceedingly careful in the observance of every possible right of the Respondent, and where the particular question has been in the balance, I have ruled meticulously,

with close attention to the rights of each of the contestant parties.

During the course of presentation by Respondent of the exhibits in question, I have paid the strictest
2985 attention to every question, answer, objection, and reply, and I cannot avoid the inescapable conclusion that the Respondent has utterly failed to justify the retention in evidence of any of the documents in question.

I admit, frankly, the inadequacy of my training in the higher realms of the comparatively recent science of cost accountancy, yet, I do have some idea of the practical factual factors entering into such computations. I cannot see, for example, how the Respondent can possibly base its defense upon a cost of invoicing as a major factor measure, of $2.65½ per invoice to all purchasers. The fallacy of this is clearly demonstrated by reference to Respondent's Exhibit 20-A, where the invoicing charge on 34 invoices to Frankford Grocery Company, amounting to $90.27, involving the sale of $31,282.26, is the same invoicing charge to the Gary Wholesale Grocery Company on a similar number of invoices, and whose purchases amounted to but $17,170.74.

A detailed examination of this and the other exhibits will demonstrate the fallacy of Respondent's position in basing its defense on an invoice cost basis, and disregarding all other pertinent factors such as allocable charges of offices other than the Chicago country billing area, some of which were clearly shown to have been included, but which were disregarded in the exhibits as offered insofar as Chicago, country and associated offices billings
2986 were concerned; also the elimination of the Kansas City, Dallas, and San Francisco branches of the Respondent, insofar as costs applicable to selling activities in these areas are concerned, which might very well have been included in the Chicago country set up, but which were not, and which, if included, might have changed the whole picture, but they were not so included, despite the admitted fact that part of the costs applicable to these offices were in fact included in Respondent's cost justification in the exhibits aforesaid.

Next we have the selection of the Port Huron plant of the Respondent as being typical of the various plants of the Respondent insofar as costs of distribution of products is concerned. This also is based solely upon a "cost of invoice" basis, and, too, without any detailed survey,

study, or analysis of this plan in comparison with any other plant of the Respondent.

Port Huron was arbitrarily, and without study, selected as a typical plant of Respondent, and this without basis, insofar as the record itself is concerned.

Recurring to the qualifications of the various witnesses for the Respondent, and affecting their ability to testify, I do not think that a witness necessarily has to be a college graduate, or one especially schooled to expound his reasons or theories on certain subjects in which he is well versed otherwise. However, as I said before, I
2987 have listened with utmost concentration to all of the testimony proffered by the several witnesses in support of the documents in question, and I fail to find any one professionally qualified to substantiate them.

In conclusion, the attempted showing of justification should be based upon a factual foundation, rather than upon estimates, hypotheses, or mere guesses as to the apportionment or allocation of costs of distribution, to say nothing of the many arbitrarily included items of distribution, the correctness of applicability and the verity of which, as shown on the various exhibits are seriously contested by counsel for the Commission.

For the reasons above cited, I am sustaining the motion to strike of the attorney for the Commission as to Respondent's Exhibits Nos. 17 to 27, as well, also, all testimony in support of or in explanation of the aforesaid exhibits.

Mr. McBride: Mr. Examiner, you have carefully prepared your statement in support of your decision for the motion to strike, and it has been read in the record, but I take it that in the preparation, and also in the course of putting it in the record, that you still have not taken cognizance of my first point, namely, that Exhibit 17 does not purport to be a cost exhibit, and yet you have stricken Exhibit 17, and all evidence in support thereof, on the
2988 grounds that it is part and parcel of what has been characterized as an inadequate cost analysis, and I simply call the Examiner's attention to that fact, in view of the length and the nature of the preparation of his statement in granting the motion to strike. None of the reasons given by the Examiner can be conceivably applicable to Respondent's Exhibit No. 17.

Trial Examiner Purcell: Let the ruling stand as made.

Mr. McBride: Mr. Examiner, then I note an exception

to the ruling, and reserve my right of appeal to be exercised at the option of the Respondent after the close of the hearing in Washington, D. C., currently scheduled for this series of hearings, that hearing in Washington, D. C., being scheduled for November 17th, 1942, and I wish to proceed with the hearings for the purpose of presenting further evidence on behalf of the Respondent at the intervening points scheduled in this current circuit, without prejudice to my right of exercising the appeal after November 17th, 1942.

Trial Examiner Purcell: Let the record show the statement of counsel.

2990 Room 713 Pere Marquette Building,
New Orleans, Louisiana,
Monday, October 26, 1942.

Met, pursuant to adjournment, at 10:00 A. M.

Before:

James A. Purcell, Trial Examiner.

Appearances:

John T. Haslett, Esq., Attorney for the Federal Trade Commission.

L. H. McBride, Esq., 310 South Michigan Avenue, Chicago, Illinois, Attorney for Respondent.

2991 Mr. McBride: Mr. Examiner, I call as the first witness in New Orleans, in behalf of the respondent, Mr. Witherspoon.

2992 J. W. WITHERSPOON was thereupon called as a witness for the respondent and, having been first duly sworn, testified as follows:

Direct Examination.

Trial Examiner Purcell: Mr. McBride, do you wish access to the record for any purpose before we start the examination of this witness?

Mr. McBride: I believe not.

Trial Examiner Purcell: All right. You may proceed.

By Mr. McBride:

Q. Mr. Witherspoon, will you state your name and address for the record, please?

A. J. W. Witherspoon, 600 South Claiborne Avenue, New Orleans, Louisiana.

Q. In what occupation are you engaged, Mr. Witherspoon?

A. Wholesale grocery business.

Q. With what company?

A. Witherspoon Brothers.

Q. They are located in New Orleans, Louisiana, are they not?

A. That is right.

Q. At what address?

A. 600 South Claiborne Street, or Avenue.

Trial Examiner Purcell: How do you spell that?

The Witness: C-L-A-I-B-O-R-N-E Avenue.

2993 By Mr. McBride:

Q. Are you the same Mr. Witherspoon who was a witness on behalf of the Commission in the same hearing some months ago?

A. I am.

Q. How long have you been connected with Witherspoon Brothers, Mr. Witherspoon?

A. Witherspoon Brothers was two years old last May. Yes, two years old this past May. In May, 1940, my brother and myself bought out the branch of the Davis-Meyers Company, which had been in operation in New Orleans here, I guess, for about fourteen years.

Q. Was this branch of the Davis-Meyers Company located at the same address?

A. The same address, yes.

Q. Were either you or your brother connected with that branch of the Davis-Meyers Company prior to May, 1940?

A. My brother was. He started that company down here in New Orleans, and was the branch manager throughout its existence. I worked for Davis-Meyers Company for about eight years.

Q. So that you are familiar with the method of operations of the Davis-Meyers Company since August, 1936, to the date of its purchase by your present company?

A. That is correct.

Q. Will you describe, Mr. Witherspoon, the
2994 method of business used or employed by your company, having reference to whether it is a cash and carry house, or whether it does credit business, whether it is a delivering, credit house, with salesmen?

A. We are what we classify and the government does to, as a service jobber, which means we have accounts out over a period of days, and we also sell cash and carry.

Q. Do you extend delivery service?

A. We deliver within the city limits.

Q. I see. Do you have any salesmen out in the field, Mr. Witherspoon?

A. Not in the city of New Orleans. We do have two out in the country territory.

Q. And your business, as I recall your previous testimony, is the wholesale grocery business, handling dry goods and other allied products?

A. That is correct.

Q. Was the method of business of the Davis-Meyers branch approximately the same from 1936 to May, 1940, the date of your purchase?

A. That is correct.

Q. There has been practically no change in the various factors on which your business was operated under either the old name or the new name?

A. That is right.

2995 Q. Do you handle Morton's blue package, meaning now the free running and iodized salt, put up in the one pound, ten inch round tube package?

A. We do.

Q. And has Witherspoon Brothers handled that at all times since 1940?

A. That is correct.

Q. Was that package also handled by the Davis-Meyers Company branch, prior to May, 1940, back to, say, August, 1936?

A. That is right.

Q. What is the current price, resale price, that your company places on Morton's Blue Package, Mr. Witherspoon?

A. A dollar sixty-five.

Q. A dollar sixty-five?

A. Yes, sir, that is a case.

Q. That is a case of two dozen?

A. Two dozen.

Q. How long has that price been in effect?

A. As far as I can remember, or as far back as I can remember, I should say.

Q. That would include back even during the time it was the Davis-Meyers house?

A. That is correct.

Q. Would you say it has been a dollar sixty-five a case at all times since August, 1936?

2996 A. Yes. In a few cases, with a larger customer, we do sell it for a dollar sixty, but that is about the cheapest that I can remember it ever being sold for; a dollar sixty or a dollar sixty-five are the two prices.

Q. Those prices have been in effect since August, 1936?

A. Yes.

Q. With both the Davis-Meyers Company and Witherspoon Brothers?

A. Yes.

Q. Can you estimate, Mr. Witherspoon, approximately how many grocery products are handled by Witherspoon Brothers, counting sizes of brands and different producers?

Mr. Haslett: I object to that question as being immaterial and irrelevant to the proceedings in this case, or the issues in this case.

Trial Examiner Purcell: The objection is overruled. You may answer.

The Witness: I would say approximately, somewhere between 2500 and 4,000 articles. Somewhere in that neighborhood. Three or four thousand.

Mr. Haslett: May I add a further objection to the question; and make a motion to strike his answer, because the answer is based upon estimates, and not upon actual knowledge.

Trial Examiner Purcell: Well, it seems to the
2997 Examiner that the witness ought to come nearer than 1500 out of 4,000.

The Witness: Well, then, I will say around 4,000.

Trial Examiner Purcell: The motion to strike is overruled.

By Mr. McBride:

Q. You make that estimate based on your years of experience in the wholesale grocery business, is that correct?

A. That is correct.

Trial Examiner Purcell: Is he testifying, Mr. McBride, upon his experience, or is he testifying on the facts as he now knows them to be?

Mr. McBride: I think the record will develop both, Mr. Examiner.

By Mr. McBride:

Q. Can you state, Mr. Witherspoon, approximately how many salt items are handled by your company, taking into the account all sizes and all brands of various producers that you may handle, and all types of salt?

A. Nine different packages.

Q. That would be all types and all brands; is that correct?

A. That is correct.

Q. And all of those nine types, the Morton's Blue Package would be only one; is that right?

A. That is right.

2998 Q. Now, with respect to dollar volume, Mr. Witherspoon, and I am not interested in dollars and cents, but can you state approximately what percentage of the total dollar volume of Witherspoon is accounted for by the gross dollar volume of all salt items, referring now to the nine to which you just testified?

A. Well, the only answer I can give you to that is—and I can't give you any figures, but I should say it is very small, a very small percentage.

Q. One per cent, or less than one per cent?

A. I should say it would be around that.

Q. I see. Mr. Witherspoon, do you know whether or not anyone in New Orleans has from time to time,—referring now to wholesale grocers,—or at any time, sold the Blue Package for less than a dollar sixty cents a case?

A. I have seen on price lists put out by other jobbers here in the city of a dollar fifty-nine. That is one that I remember. I can't tell you when that was, but I just remember that list. They get out these lists, these jobbers put them out periodically, and there is no set time any of them come out.

Q. Has that been at frequent or infrequent intervals, that price of a dollar fifty-nine?

A. That has been infrequent.

Q. Do you recall the house that put the price out
2999 of a dollar fifty-nine? Do you remember the name of the house?

A. As I remember it, it was Dounson and Company, or one of the United Cash Branches. They are the two main houses here that put out price lists like that.

Q. Other than that, has the general price level been approximately a dollar sixty-five?

A. As far as I know.

Cross Examination by Mr. Haslett:

Q. Mr. Witherspoon, I believe you testified that there has been no change in the purchasing procedure effectuated by your company from that of the Davis-Meyers Company, prior to your purchase of that branch by Witherspoon Brothers; is that true, sir?

A. That is true.

Q. You purchased salt from the Morton Salt Company when you were associated with the Davis-Meyers Company in practically the same manner and form as you do now?

A. That is right.

Q. You say you sell at a dollar sixty-fivve?

A. That is our standard price on it, our list price. In fact that is our ceiling price on it.

Q. I see, and you purchase it at a dollar fifty?

A. A dollar fifty, that is correct.

Q. Do you get any discounts or rebates at all from 3000 the Morton Salt Company?

A. No, sir.

Q. You say Dounson and Sons sold it at a dollar fifty-nine cents?

A. I said that I thought it was them. As I remember it, yes. As I said, don't ask me when, because I can't tell you, but I saw their price lists when they come out. Customers naturally bring them in to me, and they consist of a large page of a whole bunch of cut prices, under the regular standard list price of different jobbers around town, and they do it to draw business.

Q. I see.

A. It is a sale form; that is all it is.

Q. Just a leader, is that right?

A. That is right, just a leader.

Q. You don't know what price Dounson and Son had been paying for their salt, do you?

A. No, sir, I don't.

Q. If, for instance, Dounson and Son had been paying a dollar forty cents a case for salt and selling it for a dollar fifty-nine cents a case, while at the same time you were paying a dollar fifty a case and selling it for a dollar sixty-five a case, would that in any way have affected your salt business?

Mr. McBride: I make my usual objection, Mr. Examiner, and I refer now back to the previous argument on the Commissioner's case with respect to that type of question, rather than to repeat it here.

3001

Trial Examiner Purcell: You may have your exception, sir. The objection is overruled. You may answer, Mr. Witherspoon. Do you want the question read?

The Witness: Yes, if you don't mind.

Trial Examiner Purcell: Mr. Reporter, will you repeat the question?

(The reporter read the question.)

The Witness: Yes, I think it would have.

By Mr. Haslett:

Q. Adversely, sir?

A. Yes.

Q. Mr. Witherspoon, you are not in the salt business alone, are you?

A. Sir?

Q. Is that the only type of business you are in, the salt business?

A. I am not in the salt business. I am in the wholesale grocery business.

Q. I see. You sell other items besides salt?

A. Certainly.

Q. Mr. Witherspoon, you stated that your salt sales compared with your other sales of groceries and other products represented a very small percentage of such sales.

3002

A. No, sir, I didn't state that.

Q. You didn't state that?

A. I stated that my salt sales will be a very small percentage of my gross sales. In other words, when I say gross sales, I mean money we get from our gross sales, that the actual percentage is very small compared to our gross sales.

Q. And what do you mean by small, sir?

A. Well, I said I couldn't give you any figures on it,

but off hand I would say somewhere between maybe one or two percent, something like that.

Mr. McBride: One or two percent of your gross sales would be salt; is that right?

The Witness: Something like that, yes. It would not be any more than that; I can tell you that.

By Mr. Haslett:

Q. Mr. Witherspoon, prior to the time that your company began its business, and purchased the Davis-Meyers Company branch; the Davis-Meyers Company was receiving a discount or rebate from the Morton Salt Company, weren't they, sir, if you know of your own knowledge?

A. I ~~don't know; I really~~ don't.

Q. Has there been any great difference between the purchases of salt from the Morton Salt Company since Witherspoon Brothers took over the Davis-Meyers branch?

3003 A. Yes, I will say our purchases from the Morton Salt Company have increased.

Q. Have increased?

A. Yes.

Q. You know that of your own knowledge, of course?

A. Yes.

Mr. Haslett: I have no further questions.

Redirect Examination by Mr. McBride.

Q. Mr. Witherspoon, I think you referred to the dollar fifty-nine price as a special leader for getting additional business by this concern?

A. That's right.

Q. Were those special leaders in for a matter of a day, or a week end special, or for a short period of time, or how would you describe it?

A. They usually run over a period of about a week.

Q. To what degree would the existence of that special price affect your business, such as you have described?

A. Well, on our regular customers, customers who have been dealing with us over a period of years, I don't think it would do any harm, but we also have a group of customers who do a lot of shopping, and when I say shopping, that is going around looking for bargains, and you might be given an order, let us say, for ten items, and Morton

Salt comes up, and you are asked a price on it, and
3004 you quote a price of a dollar sixty-five. Well, the customer says, "I can get it from one of these other wholesalers at a dollar fifty-nine. Will you meet it?" We say no, that we will not meet it, and the chances are we will lose that order just on account of that one item. Now, that happens just in a very few cases with the shoppers, as I say, but with our regular customers, who really give us the majority of their business, or our business, it doesn't make any difference. You might get fussed at at little bit, or called down, but that is about all.

Q. That would be true, would it not, Mr. Witherspoon, whether the special leader item was Morton's Salt, or Carnation Milk, or a sack of potatoes?

A. Any item, yes.

Q. Any item?

A. Yes.

Q. Just the natural consequences of competition?

A. Yes.

Q. In the wholesale grocery business in New Orleans; is that right?

A. That is it.

Q. After the loss leaders have been posted, does the trade generally drift back into its routine, after a week or so?

A. That is correct.

Q. So the effect, if any, is very temporary, by
3005 reason of the loss leader items that you have referred to?

A. That is right.

Mr. McBride: That is all of the questions I have, Mr. Examiner.

Re-cross Examination by Mr. Haslett.

Q. Mr. Witherspoon, it wouldn't really be a loss leader, would it, if they are purchasing at a dollar fifty and are selling at a dollar fifty-nine? They would have to be purchasing it at less than the price at which they were selling it, for it to be a loss leader, wouldn't they?

A. Well, I don't know. There is a lot of definitions of a loss leader. That is a point of argument there.

Q. Mr. Witherspoon, lets assume you were in the salt business only; that you had no other type of grocery business; that you were just reselling salt to the retailers,

and you were selling Morton's round package Blue Label salt at a dollar sixty-five cents a case, and along comes Mr. Dounson and Son and sold it at a dollar fifty-nine cents a case. That would have a material effect on your business, wouldn't it?

Mr. McBride: Mr. Examiner, I object to that type of question. I realize that counsel is permitted, within certain realms, to make questions based on suppositions or hypothetical facts. We are confronted in this case
3006 with the Morton Salt Company and sales to its customers. This gentleman is in the wholesale grocery business. The Morton Salt Company does not sell to any man in New Orleans who is selling nothing but salt. There is literally no basis in fact for the question, and it will contribute absolutely nothing to this record. We are concerned with the competitive effect on all of the rest of the wholesale grocery business, with all of the way from two thousand to four thousand items, depending on the business involved. We object to a hypothetical question of that nature.

Mr. Haslett: Mr. Examiner, counsel has brought out on his direct examination that there might be a temporary effect in the sale of salt, and he also has brought out that this witness is engaged in the wholesale grocery business, and that salt is one among the many items which he resells. Now, I think I am entitled, in the latitude of cross-examination, to develop from this witness his opinion as to what effect it would have upon his business if he were engaged in the salt business alone, and selling at a certain price, and a competitor were selling at a lower price.

Mr. McBride: If the Examiner please, this man is not in the salt business alone, and there are no facts showing that anyone is in the salt business alone in the city of New Orleans. How can this man testify as to what the effect would be, or what he would do? He has never
3007 been in that business. We are not involved in a matter that involves somebody in the salt business.

Trial Examiner Purcell: I think we have had enough argument on the record. I am going to overrule the objection and let the witness answer it, as being within the purview of fair cross examination which should be accorded to the Commissioner's attorney. It may be that the witness doesn't know. I don't know. If he does know, or if he has a fair opinion, I think he should be permitted

to state it. I have already made a similar ruling on a number of occasions before when this question was up.

Mr. McBride: I didn't understand.

Trial Examiner Purcell: I have made a similar ruling on a number of instances before.

Mr. McBride: I can't understand what conceivable bearing it would have on this case, Mr. Examiner. There is nothing brought out in the Commission's case to show that there is anybody in New Orleans who just buys salt alone, and there is nobody.

Trial Examiner Purcell: I will let the ruling stand.

The Witness: May I have that question over again, please?

Trial Examiner Purcell: Repeat the question to the witness, please.

(The reporter read the question.)

3008 The Witness: Yes, I should think it would. If he continued to sell salt at a dollar fifty-nine, and I was selling at a dollar sixty-five, there is only one thing I could do, and that would be to meet his price of a dollar fifty-nine, or go out of business, or either try to get him to come back up to my price. One of three things.

Mr. Haslett: I think that is all, Mr. Examiner.

Re-direct Examination by Mr. McBride.

Q. Mr. Witherspoon, since we have counsel for the Commission's example of a dollar sixty-five against a dollar fifty-nine, on the assumption that you are selling nothing but salt, would it necessarily follow that at the end of the year you would make less profits at a dollar fifty-nine than at a dollar sixty-five, if your turn over increased, or if your overhead decreased, or if any other factor entered into it? By that I mean, does the mere fact that you might have a lower resale price mean that you would make less profit at the end of the year, unless you take into consideration all of the other profit factors that go into the wholesale business?

A. Well, as I said, or as you said, I mean, if you increase your volume and all, selling it at that lower price, you could increase your profit, yes.

Q. Mr. Witherspoon, the mere fact then that you might drop your price on counsel's example, doesn't mean that you would have less profits at the end of

3009 the year?

A. That is a pretty hard question to answer. If you increase your volume, yes, you would get more profit from it.

Q. In other words, all of those factors would have to be taken into consideration, is that correct?

A. That is correct.

Q. On the resale price?

A. That is right.

Mr. McBride: No further questions.

Re-cross Examination by Mr. Haslett.

Q. Mr. Witherspoon, it still doesn't alter the fact that if someone else is selling salt at a price which is under the resale price of the same type, grade and quality of salt that you are selling, that is he is selling at a dollar fifty-nine as compared to your dollar sixty-five cent price, why no matter how you increase the volume, the differential between a dollar fifty-nine and a dollar sixty-five is still going to have a substantial effect upon your business, isn't it, sir?

A. If I keep my price at a dollar sixty-five, yes.

Mr. Haslett: I think that is all, sir.

Mr. McBride: I have no further questions.

(Witness excused.)

3010 Mr. McBride: I call as the next witness on behalf of the Morton Salt Company Mr. Sale.

BENJAMIN C. SALE was thereupon called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct Examination by Mr. McBride.

Q. Mr. Sale, will you state your name and address for the record?

A. Benjamin C. Sale, 1001 South Broad Street, New Orleans, Louisiana.

Q. What is your occupation?

A. Sales manager and buyer.

Q. Of what company?

A. H. G. Hill Stores, Incorporated.

Q. That company is located in New Orleans, Louisiana, is it?

A. It is.

Q. Are you the same Mr. Sale that testified as a witness on behalf of the Commission in this case some months ago?

A. I am.

Q. What sort of business is H. G. Hill Stores, Incorporated engaged in, Mr. Sale?

A. Retail grocery business, which includes the
3011 sale of groceries, fresh meat and produce, and bakery products.

Q. Do they have stores located in New Orleans, Louisiana?

A. They do.

Q. What type of stores do they have here in New Orleans; by that I mean, are they small stores, super markets, or what type?

A. They have all types, small stores, large stores, and the super type, super market type.

Q. You would designate them as super markets and regular stores, is that correct?

A. That is correct.

Q. Do you know approximately how many super markets you have in the metropolitan area of New Orleans?

A. We have eight in the City of New Orleans.

Q. How many regular stores do you have in New Orleans?

A. Seventy; approximately seventy; that is, outside of the supers.

Q. What is the difference, if any, Mr. Sale, in the manner in which you merchandise your products in the super markets and in the manner in which you merchandise your products in the regular stores?

A. There isn't any difference except the massive displays.

Q. In other words, in the super markets you carry—

A. A larger variety.

Q. Is the super market based on a cash and carry basis?

3012 A. Yes.

Q. Is that also true of the small neighborhood stores, the regular stores?

A. Yes.

Q. The essential difference is the volume of business done and the business done in the super markets, is that correct?

A. That is correct.

Q. With respect to your general line of grocery items in the super markets as contrasted to the same general line in the regular stores, do you observe any general price differential between the two stores?

A. That is our normal price.

Q. On what basis is that price differential based on, lower cost of doing business, volume of merchandise, or what?

A. The volume of business.

Q. On that basis primarily you carry a lower price on the super market items than on the regular store items?

A. As a rule we do.

Q. Do you handle Morton's blue package, by that I mean the blue, round package of iodized salt?

A. We do.

Q. Is that handled in both the regular stores and the super markets?

A. It is.

Q. What is your retail price in the regular stores?

3013 A. Nine cents in the regular stores.

Q. What is it in the super markets?

A. Seven cents.

Q. How long has the nine cent price been in effect in the regular stores, do you recall?

A. I came to New Orleans in January of last year, it was in effect when I got here.

Q. It has been nine cents ever since?

A. That is right.

Q. Has that also been true of the seven cent price in the super markets?

A. We didn't go into the super market type of operation until sometime in the first quarter of last year.

Q. When you did open up you established a seven cent price on blue label?

A. Yes.

Q. It has been at that price ever since?

A. Ever since.

Q. Mr. Sale, are there other super markets operated in the metropolitan area of New Orleans besides the ones operated by your company?

A. There are.

Q. Can you identify them as to the person or company that operates some of those stores?

A. The Great Atlantic & Pacific Tea Company,
3014 the Capitol Stores, Canal-Villere, Pat's, Brugier's, and others.

Q. The Canal-Villere, is that an independent super market?

A. They are, so far as I know.

Q. They are not associated with any other chain?

A. Not any chain.

Q. Is that also true of Pat's, is that the second one?

A. Pat's is an independently owned store so far as I know.

Q. Do you meet the competition, or rather, you encounter the competition of these independently operated super markets as well as those operated by Capitol and A. & P.?

A. We do.

Q. Is there any area in particular in New Orleans where you encounter primarily the competition of the independently owned super markets?

A. Is there any area?

Q. Is there any area in particular in New Orleans where you encounter primarily the competition of the independently owned super markets?

A. Yes, on St. Claude Avenue.

Q. Do you have a super market yourself located there?

A. I do.

Q. Do you mean the other super markets are serving in that same area?

A. Pat's and Brugier's.

Q. Mr. Sale, in determining whether or not your
3015 company is operating at a profit what factors must be taken into consideration, if you can outline them briefly?

A. The volume of business, the cost of doing business, the store operating expense, overhead, and various other factors.

Q. In other words, to determine whether or not the operation has been profitable you must consider all of those factors?

A. All factors must be considered.

Q. I take it all of those factors must be considered in determining the resale price which you place on your various grocery products, is that correct?

A. That is true.

Q. Do you know whether or not, Mr. Sale, the volume of your regular stores has increased or decreased, or held approximately the same, since the inception of your super markets here in New Orleans?

A. They have shown an increase.

Trial Examiner Purcell: You will have to hold your voice up, if you will please, so the reporter can hear you. There is a great deal of extraneous noise here, airplanes, automobile horns, and so forth. Just let the record show that,

Mr. Haslett: May I have the question reread, Mr. Examiner?

Trial Examiner Purcell: Yes. Read the question.

3016 (The reporter read the question.)

Mr. Haslett. Is that confined to salt?

Mr. McBride: No, this is a question as to general volume.

A. It is increased.

Mr. Haslett: I want to object to it and move the answer be stricken, Mr. Examiner, on the grounds it is immaterial to the issues in this case. We are interested only in salt in this case, and not in the general increase in other commodities.

Trial Examiner Purcell: The objection is overruled. You may have your exception as in the past. The witness will please answer if he can.

A. It has increased.

Trial Examiner Purcell: It has increased?

A. Yes.

By Mr. McBride:

Q. In purchasing the Morton Salt Company's blue package, Mr. Sale, what cost basis is used in determining the cost of the blue package and the price to the purchaser?

A. A dollar and a half a case.

Q. In your opinion, Mr. Sale, would your business be particularly injured in any way if, while you were selling Morton's blue package at nine cents a package, a competitor were selling the same package at seven cents a package?

3017 A. I don't think so, because you have to take too many factors into consideration. You have to take your number of items as a whole into consideration. Salt is only one of many items we handle.

Q. I think you have stated there was a two cents differential between the resale price of the blue package in your super markets and in your regular markets, is that correct?

A. That is correct.

Q. Has the two cent differential in your own two types of stores resulted in any inroads, as far as you know, in your volume in your regular stores?

A. As far as I know it hasn't.

Q. So, if a two cent differential in the resale price would make any material difference, in that degree your super markets would put the regular markets out of business, is that correct?

A. If that was true we would do all of the business in the super markets.

Q. You described a moment ago the various factors that enter into the determination of whether or not your company operates at a profit. Assuming for a moment you were paying a dollar and fifty cents a case for Morton's blue package while a competitor was paying a dollar and forty cents a case, would that fact alone, without consideration of any of the other factors you
3018 described, necessarily mean your profits would diminish or be injured as a result of that differential?

A. You have to take all factors in consideration.

Q. By that you mean if the other competitor is selling at—

A. The resale price, the volume, the operating cost.

Q. I believe when you testified previously as a witness on behalf of the Commission you testified your stores received a quantity discount of ten cents a case from the Morton Salt Company, is that correct, on the blue package?

A. That is correct.

Q. You testify now that a dollar and a half is used by you as the cost in pricing the blue package?

A. That is correct.

Q. So the ten cent quantity discount doesn't enter into the determination of the resale price by your company, is that correct?

A. It does not.

Q. How is that ten cent discount handled, if you know?

A. That I couldn't answer.

Q. In other words, it doesn't pass through your buying and selling department?

A. It does not.

Q. In the light of your experience with the Hill Stores, Incorporated can you state approximately the number of items of all brands and sizes that would be carried by one of your regular stores?

3019 Mr. Haslett: I have the same objection, Mr. Examiner.

Trial Examiner Purcell: The same ruling. You may answer.

A. You speak of all types of items, or salt?

By Mr. McBride:

Q. All types.

A. Approximately 2,000 or more.

Q. Approximately how many would you handle in one of your super markets?

A. I will say approximately more than 2,000. We carry considerably more sizes than the regular stores.

Q. In other words, the variety is much larger?

A. Much greater than the regular store.

Q. Approximately how many salt items of all sizes and brands are carried by the Hill Stores, Incorporated in its regular stores?

A. Six, I believe.

Q. Six. That might vary one either way from time to time, is that right?

A. It could.

Q. Normally they carry six items?

A. Six items.

Q. Would that also be true of the super markets, or do they carry different sizes of salt items?

3020 A. It would be the same size.

Q. So the number of total salt items would be much less than one-half of one per cent of the total number of items carried, is that right?

A. Yes.

Q. With respect to dollar volume, Mr. Sale, and I am not interested in dollars and cents figures but only in percentages, can you state approximately what percentage of the total dollar volume of the Hill Stores is accounted for by the gross dollar volume of all salt items in the Hill Stores?

A. I would say in the neighborhood of a half of one per cent.

Q. You are referring to all salt items?

A. All sizes of salt.

Q. Of which the blue can is only one item, is that correct?

A. That is right.

Q. You may cross examine.

Cross-Examination by Mr. Haslett.

Q. Mr. Sale, you said in reply to a question by Mr. McBride that various factors entered into the question of whether or not your company makes a profit. Do you remember testifying to that?

A. I do.

Q. You named some of those factors. Now, is
3021 the price which your company pays for its commodities an important factor in its business?

A. Well, cost enters into the factors relating to the resale price, and the volume of business, your overhead, and cost of doing business.

Q. Do you know of any other factor that is more important than the price your company pays for its various commodities it resells to the consuming public?

A. Cost is only one factor.

Q. Isn't it the most important factor?

A. Not in every case.

Q. Do you think H. G. Hill Stores could continue to stay in business if they were paying a higher price for its various commodities than its competitors were paying?

A. I don't have any question of doubt but what we are paying for some items—

Q. I am talking about all items?

A. You have to take an average. You might buy a commodity at one time at one price, and you might pay another price on the next purchase.

Q. What I am talking about, Mr. Sale, if the H. G. Hill Stores, Incorporated was paying a higher price for all of its requirements which it resold to the consuming public than do its competitors, it couldn't stay in business very long, could it?

3022 A. I don't think that is true.

Q. I am not asking you that, sir. I am asking you if that isn't a fact.

A. I wouldn't know, because we don't, on every item, know what the other fellow might be paying.

Q. How long have you been in the retail grocery business?

A. About twenty-five years.

Q. Based on your knowledge as an expert in the retail grocery business, having been in it twenty-five years, do you know whether or not you could stay in business if you were paying a higher price for your requirements than your competitor was paying?

A. I have no way of knowing what my competitor was paying.

Q. Let us assume for clarity that you were paying ten per cent higher prices for those 2,000 commodities you sell in your stores than your competitor across the street was paying. Would that in any way have any effect on your business.

A. I think it would depend on the volume of business, and your cost of doing business, as against his cost of doing business on the volume of business he might be doing.

Q. Mr. Sale, you know, as well as you know you are sitting in that chair in front of this Examiner, that if your company was paying a ten per cent higher price and selling at the same price as the competitor you couldn't stay in business a year?

3023 Mr. McBride: I object to that question and ask that it be stricken from the record, Mr. Examiner. Counsel for the Commission inquired, and the witness has answered as best he can, but it isn't for counsel for the Commission to attempt to bludgeon the witness into an answer that the witness can't make.

Mr. Haslett: I will say it isn't an attempt to bludgeon the witness, and I don't mean it that way.

Trial Examiner Purcell: Let the motion to strike be granted as to the form taken by the last question of counsel for the Commission. Let me remark in making my ruling that counsel for the Commission has attempted to elicit certain testimony here, which to the mind of the Examiner is susceptible of a clear and decisive answer by the witness, but the witness continues to argue, and perhaps purposely evade a direct reply, and to caution the witness if he does know the answer to let him give it and every opportunity will be afforded to Mr. Sale to explain his answer.

Mr. McBride: If the Examiner please, I take exception to the remarks about the witness trying to purposely

evade anything. The gentleman knows the retail business and knows the factors involved in it. I think it is entirely inappropriate to suggest it is his purpose to evade anything. He is endeavoring to answer a question that may not be susceptible to an answer that counsel for the
3024 Commission hopes he will get.

Trial Examiner Purcell: Then the thing to do is to have the witness say he doesn't know, in the interest of the length of the record, Mr. McBride. I have no personal interest in this matter.

Now, the record stands that the last question of counsel for the Commission is stricken upon motion of attorney for the Respondent, and we will proceed.

By Mr. Haslett:

Q. Mr. Sale, let us assume the Hill Stores, Incorporated have one store, and they are in competition with A. & P. right across the way, and H. G. Hill Stores pay ten per cent higher for every commodity that goes into that store than A. & P. does, and they are both selling at the same price. Do you think, based on your good judgment, sir, that the H. G. Hill Stores could continue to stay in business competing with A. & P. when you were paying ten per cent higher for all of your requirements than A. & P.?

A. I still would have to know what the volume of business was. One man may make a profit off an item and pay more for it than another. It depends on how he features the commodity, whether he gets behind that commodity, and pushes the sale of that commodity.

Q. In order to satisfy you on volume, let us assume that both of you were doing the same volume of business,
3025 and one paying ten per cent higher than the other. Would that in any way have anything to do with your business, sir?

A. I still don't feel that because one man might be paying more for one commodity as against another that that particular thing is going to put him out of business. It still depends on how good a merchant he is, and how much of that commodity he sells.

Q. That is not my question.

Trial Examiner Purcell: Pardon me. Wasn't counsel's question predicated on the assumption of all business?

Mr. Haslett: That is right.

Trial Examiner Purcell: Not a particular portion of it?

Mr. Haslett: That is right.

Trial Examiner Purcell: Did you so understand the question, Mr. Sale?

A. I didn't understand that phase of it. I thought you were talking about a commodity.

Mr. Haslett: No.

Trial Examiner Purcell: Mr. Reporter, please read counsel's question to the witness.

(The question is read by the reporter.)

A. I don't know what effect that would have on the profits. As I say, unless I knew what his cost of doing business was, what his rent was, his general over-
3026 head, his heat, lights, water, power, what his employment expense was, he might be able to do business on a lower cost of doing business.

By Mr. Haslett:

Q. Listen, Mr. Sale, let us assume that the operating cost of your store, and the volume, is the same as the operating cost and volume of the A. & P. Store, your competitor across the street, and you are paying ten per cent more for all of your requirements than A. & P. is paying. Would that in any way have any effect on your business?

A. I couldn't say what effect that would have because with the various number of commodities that you sell one store might have or do a better job of selling produce, which carries a higher mark up, and he might specialize in the produce end of the business and do a tremendous volume in that department, whereas the other man wouldn't be paying any attention at all to the fresh produce end of the business.

Q. Mr. Sale, I was predicating my question on the fact the volume in all departments was identical between the two stores, your store and A. & P., and A. & P. was paying ten per cent less for their requirements than you were. Do you think you could stay in business if you were both selling at the same price, taking everything into consideration, and they were both identical?

A. All factors are identical, the same volume, the rent the same, the clerk hire the same?

3027 Q. That is right.

A. Everything?

Q. Everything identical except the fact that you pay ten per cent more for your requirements than A. & P. pays for theirs.

A. In the first place that wouldn't be true.

Q. But that is not my question. I am asking you whether or not you would be able to stay in business under those conditions?

A. As an individual I think I would push my more profitable lines of merchandise to overcome a situation of that kind.

Q. Mr. Sale, you are not answering my question, sir.

A. I am trying to answer it.

Q. All I want is your direct answer on this, either a "Yes" or "No", and we will hear your explanation afterwards. I will put my question to you again, sir. Let us assume that you have a store on Canal Street, or any other street in New Orleans, and it is the only store that you operate; you are in competition with the A. & P. Tea Company who operates a store directly across the street from you, and you both have identical operating costs, you are doing the identical volume of business, but you are paying ten per cent more for your requirements which you resell to the consuming public than A. & P. is paying for the same type of requirements. Do you under those conditions feel that you could continue in business?

3028 A. That would depend, as I say, on how I merchandised my store, and the class and character of merchandise I sold.

Q. If you were doing the same volume of business it wouldn't make any difference how you merchandised it, if you do the identical volume, would it, sir?

A. Yes sir, it certainly does. If I push a line of merchandise like fresh produce which turns over daily, that changes the gross profit rate on the volume of business that you do.

Q. Let us assume, so we can get this question clear and up to an answer, that you have the identical merchandise and functions as A. & P. in all departments. Now could you answer my question, sir?

A. I still would have to go back to the basis that it depends on the type of merchandise we have in the store. One man might lose two per cent shrinkage on the fresh produce and another manager lose five per cent due to his method of operation and taking care of that type and kind of merchandise.

Q. You testify if one of your competitors was selling merchandise, Morton's round package salt, at seven cents per package, the same kind you were selling at nine cents, it wouldn't in any way affect your business?

A. I said you have to take into consideration all of the items you carry in the store. I don't think one item alone would injure my business.

3029 Q. This proceeding is predicated on salt, and salt alone. We are interested only in the salt business, not in the other 2,000 items in your store. Now, considering the fact Mr. Sale is in business selling Morton's round package salt only, that is the only commodity you have in your store, you are selling it direct to the consuming public, and you have a competitor across the street who is selling only Morton's round package salt. You are selling it at nine cents and he is selling it at seven cents. Do you mean to say that wouldn't affect your business?

A. Do you mean that is the only item you are selling?

Q. That is right.

A. You will never have a case like that.

Q. That is not my question, Mr. Sale. Just answer the question on the facts I present to you and I would appreciate it. Will you read the question, please?

Trial Examiner Purcell: Read it.

(The reporter read the question.)

A. Do you mean I couldn't handle anything else but salt?

By Mr. Haslett:

Q. That is the question. That is the only thing you do handle.

A. That is a theoretical question?

Q. That is all assumed facts. I know you are not in the salt business only.

3030 A. The cost was the same, the volume the same, the rent the same?

Q. That is right.

A. The overhead the same?

Q. Operating costs all the same, the lighting the same, the merchandise the same, and one selling it two cents less than the other.

A. In the first case, you will never have a case like that in our business—

Trial Examiner Purcell: You are asked, Mr. Sale, to assume, if you will, please, that such a case does exist, and upon that assumption to answer the question.

A. I have never been faced with a situation of that kind.

Trial Examiner Purcell: Can you assume a situation without actually having experienced it? That is the question.

A. Every factor is the same?

Mr. Haslett: Yes sir.

Trial Examiner Purcell: Yes sir. You have repeated that on a number of occasions. The factors are the same down to the minutest detail. The only difference being you are selling for two cents a can more than your competitor. Assuming such a case, if you can, what would be your answer to counsel's question?

A. Well, I don't think every customer shops for
3031 products, and while he might do a little more volume of business with his seven cent price than I might do with nine, that doesn't necessarily mean I couldn't stay in business.

Q. What would you shop for if you both had the identical product, round package blue label salt? What other thing could you shop for other than price?

A. I know this about our business, we do have price differentials between our regular store and our super markets, and our super markets don't get all of the salt business.

Q. You still haven't answered my question.

A. I am trying to answer it from my experience in the grocery business. If everybody was looking for price, and price alone, which isn't true in the grocery business,—

Q. Mr. Sale, if I should ask you if two times two are five what would you say?

Mr. McBride: I object to that sort of a question, Mr. Examiner. Counsel obviously is perturbed because he can not get his type of answer.

Mr. Haslett: I am not even getting an answer.

Mr. McBride: I want to make a statement on the record.

Trail Examiner Purcell: No discussion across the table between counsel. In the first place, if there is an objection to be made Mr. McBride will make it in his usual form and his usual courteous manner.

3032 Mr. McBride: I don't mean to involve personalities, but I am objecting to the last question and I wish to state my grounds. With all due respect to counsel for the Commission, I think perhaps he is not entirely realistic about the grocery retail or wholesale business, or the salt business, and he is making certain assump-

tions that he frames in his question that to his view should elicit a certain answer. It is my own humble opinion that the answer I am almost certain he wants is not necessarily the possible answer. This witness isn't trying to evade anything. He is testifying as a sales manager and buyer for a large concern. I don't think it is proper for counsel to take the attitude, because his views happen to turn out not to coincide with the views of the witness, that he may present such a question as "Two times two makes five", and cast aspersions. I believe that is wholly out of order. The statement is made the witness hasn't answered the question. He hasn't answered the question in the form counsel would prefer, but it doesn't follow that he hasn't answered the question. I state these reasons in support of my objection to this last question and as a view of my observations on the type of question itself.

Trial Examiner Purcell: Can we hold the record down a little bit, gentlemen? I ask your cooperation. Do I understand all of your statement was made in support of your motion to strike the last question?

3033 Mr. McBride: My objection to the last question.

Trial Examiner Purcell: I will hear from you.

Mr. Haslett: I have no objection to the Examiner granting the motion.

Trial Examiner Purcell: The objection has been long, with a long involved statement on the record. The motion to strike is granted.

By Mr. Haslett:

Q. Mr. Sale, I know it is your desire to answer these questions directly, sir. That is all I want you to do. I don't want you to answer in any other way. Just give me your best judgment, and your answer predicated on that judgment. I want you to assume the statement of facts I am going to give you, sir, and I am going to expect you to answer and pass on to some other point, from those assumed facts. Let us assume that you, Mr. Sale, are engaged in the retail business; you are selling only salt, that is the only commodity you have in your store; you are in competition with another gentleman who has a store across the way from you and sells only salt; you have the same type of store, the same floor space, you use the same type of merchandise, you buy at the same price,

you are selling Morton's round package salt direct to the consuming public; you both are selling Morton's round package salt direct to the consuming public and you both are paying a dollar and a half a case for it, sir. Now,
3034 you have the same operating cost, the same volume, the same merchandise; the only difference is that your competitor is selling it to your customers at seven cents while at the same time you are selling it at nine cents. Would that in any way have any effect upon your salt business in your own business?

A. I might not sell as much as he would.

Q. Remember my using the word "volume"? I said "the same volume".

A. I would still sell some salt.

Q. You wouldn't get as much for it, though, would you?

A. I might not get as much for it, but I would still be in the salt business. I would still be selling salt.

Q. How long do you think you would stay in the salt business if he was selling two cents lower than you? Do you think the customers are going to buy from you when at the same time they can walk across the street and get it two cents a package cheaper?

A. They do now with that differential.

Q. Your company gets a ten cent discount from the Morton Salt Company on the round package salt?

A. They do.

Q. You say you predicate your resale price of salt on the dollar and a half a case and not the dollar and forty cent a case price you pay?

A. A dollar and a half is our basis for cost in
3035 setting our retail price.

Q. Why is that?

A. That is our actual invoice cost.

Q. You pay a dollar forty for it, don't you, sir?

A. That is a quantity discount.

Q. Have you any single unit in New Orleans that purchases 5,000 cases of Morton's round package salt during any twelve consecutive month period?

A. Any single unit?

Q. Yes.

A. I couldn't answer that because I don't see the checks on the quantity discount.

Q. You are the sales manager, aren't you?

A. I am, but those don't come through my office.

Q. Do you know how much salt you sell from each unit?

A. Each individual store?

Q. Yes.

A. No sir.

Q. You don't make a check of that?

A. As a total.

Q. As a total?

A. As a yearly total and a weekly total. I have records accumulated by weeks, for each week.

Q. Does the H. G. Hill Stores operate in any other territory besides New Orleans?

3036 A. There are Hill Stores in other sections of the country.

Q. Are they associated with your company?

A. I couldn't answer that phase of it. I don't know anything about the other units.

Q. Where is your main purchasing office?

A. 1001 South Broad Street, New Orleans, Louisiana.

Q. Do all of the units of the H. G. Hill Stores in New Orleans use 5,000 cases of Morton's round package salt during any one twelve consecutive month period?

A. I have to check the records on that. I think we will use that much this year.

Q. You didn't check the records?

A. I didn't. I haven't had occasion to check the records on that.

Q. You don't know whether they use less or more?

A. Until I check the records I couldn't make a positive statement.

Q. What do you do with the ten cents you get back from the Morton Salt Company?

A. I have nothing to do with that. That doesn't pass through my office.

Q. What does your company do with it?

A. I couldn't answer that. I don't have access to those records.

Q. Do you know whether it puts it into the general

3037 fund or not?

A. I would think it would be credited to possibly "Other Income".

Trial Examiner Purcell: The witness has said, Mr. Haslett, he doesn't know. Any answer you might elicit now would be a mere conjecture.

By Mr. Haslett:

Q. Mr. Sale, you testified to approximately 2,000 items that you resell to the consuming public?

A. I have.

Q. Among those is bread?

A. Bread.

Q. Bread?

A. Yes.

Q. Do you get any discount from the bread dealers?

Mr. McBride: Mr. Examiner, I object to that because it is obviously inappropriate as to what discount he gets on other items from anybody. Then, also, I wish to make another remark off of the record, please.

Trial Examiner Purcell: Off of the record at the request of counsel.

(Proceedings had off of the record.)

Trial Examiner Purcell: On the record. There is an objection before me.

Mr. Haslett: Is there an objection?

3038 Mr. McBride: An objection to the last question.

Trial Examiner Purcell: The objection of counsel for the Respondent is sustained for the reason it is not correct cross examination, and for the second reason that I imagine it is immaterial to the issues in this case, what discount this witness, or his employer, receives on other commodities.

Mr. Haslett: I just want to make one observation in connection with it, Mr. Examiner, for the record, please.

Trial Examiner Purcell: Yes sir.

Mr. Haslett: As to this particular witness the ground for the objection might be predicated on the basis it is immaterial to the issues of the case, but as to not being relevant to the issues of the case, and being the price or discount which this company receives on other commodities, I think counsel for the Respondent has opened the door for that in asking him the basis on which the price of salt is predicated, on which the resale price of salt is predicated. He said it was a dollar and a half. In drawing a comparison between salt and some other items I think I would be entitled to go into what was the basis on bread or any of the 2,000 items brought out on direct examination.

Trial Examiner Purcell: With this witness we would be here 2,000 years going into the other 2,000 items, Mr. Haslett.

3039 Mr. Haslett: That isn't the question, whether we would be here 2,000 years or two days. The question is on the relevancy of the testimony. I am perfectly willing to accept the Examiner's statement as to the materiality of the testimony, but not as to relevancy.

Trial Examiner Purcell: Let the ruling stand.

By Mr. Haslett:

Q. Mr. Sale, will you state for me the factors that enter into the retail grocery business in regard to the profit which your company makes on its various commodities?

A. Store operating expense, which includes the manager's salary, store clerks, bags, paper, and twine; heat, light, water, power, and sundry.

Q. What was the last one?

A. Sundry or miscellaneous, laundry and ice and things of that type.

Q. They are the only ones?

A. That is from the store operating expense. Then, the rent, your warehousing, transportation, and general overhead.

Q. As to the purchasing of the commodities, what is the most important factor in that connection, sir?

A. As to the purchasing?

Trial Examiner Purcell: Give me that question, please.

(The reporter read the question.)

3040 By Mr. Haslett:

Q. What was your answer?

A. Cost of doing business, the price of the commodity, its relation to the total of items, or the class of item it might fall in, whether it is canned goods item or dry groceries or a staple.

Q. Is that all, sir? Of those items you mention in relation to cost, what would be the most important factor?

A. The cost of doing business would be one of the most important.

Q. Would the price which you pay for commodities be an important factor?

A. That has a bearing.

Q. It has a bearing?

A. It is not the sole factor.

Q. Would you say it is or is not the most important factor?

A. I would say your cost of doing business is most important.

Q. Do you take into consideration the price at which competitors sell their products?

A. We do that from a price competitive check.

Q. Why do you do that?

A. To see whether or not we are in line with the average of the competition we are dealing against.

Q. Why do you want to be in line with them?

3041 A. For the two classes of stores we operate.

Q. Why do you want to be in line with the competitors in the super market class?

A. That is a large volume type of store, that is the particular class of people we are catering to.

Q. Is it a fact you want to have the same price on the commodities that you both sell, that is the competitor and yourself sell, and is that an important factor?

A. To an extent, yes. We don't sell every item on the basis of the same price as a competitor. He may be cheaper on some items, he may be higher on some items, or we might be lower on some items.

Q. That is the extent of it, is that correct?

A. We try to be fairly competitive.

Q. Why do you try to be fairly competitive?

A. To cater to the class of people we are trying to reach.

Q. It is not a matter of catering to the people, it is a matter of staying in business, isn't it, sir?

A. No, it is not necessarily staying in business; it is trying to increase your volume of business through outlets of that type.

Q. What is the purpose of your business?

A. Retailing groceries.

Q. I mean is it a purpose to serve the consuming public or to make a profit and serve the consuming public?

3042 A. First of all is to serve the public and make a pro[illegible]

Q. If you didn't make a profit what would happen?

A. If we didn't make a profit?

Q. That is right?

A. In what given period of time?

Q. Any time you select?

A. I don't know how I could answer that question. The time would be the most important element.

Q. Isn't it a fact, Mr. Sale, that the primary reason for your company being in business is, first, to make a profit upon the resale of these commodities to the consuming public in order to stay in business?

A. We do make a profit.

Q. And that is the most important factor, isn't it?

A. We do make a profit.

Q. I say that is the most important factor, isn't it?

A. As a whole, that is.

Q. Then, secondarily would be serving the consuming public, is that correct?

A. You can't make a profit unless you serve the public and offer them a wide variety and selection of merchandise.

Q. I believe you testified, Mr. Sale, that the average number of items in your stores was 2,000 items that you sell to the consuming public?

A. I believe I said in our regular stores it was
3043 approximately 2,000, and in our super stores it was more than 2,000.

Q. How many more?

A. I couldn't answer that unless I made a complete check. I am only giving you an approximate figure.

Q. They are just guesses, aren't they?

A. No, they are not a guess. We know approximately how many items, that is, all brands and sizes.

Q. How do you know that, sir?

A. Well, I have counted them in the past, and that varies from year to year.

Q. When did you count them last?

A. I couldn't answer that date I counted them last.

Q. Within the last year?

A. Within the last year and a half, when we opened our super stores.

Q. You count the number of items on the shelves?

A. Not on the shelves, but off of our price book.

Q. Off of your price book. Each item represented on your price book is on the shelves, is that it?

A. It is supposed to be. It is available for the stores.

Q. Mr. Sale, can you tell me why your company wants to take from the Morton Salt Company a ten cent rebate on its round package salt?

A. Why?

Q. Yes sir.

3044 A. Based on their volume, I suppose.

Q. It is desirable to have that ten cent per case, isn't it?

A. Not as a part of our cost. In setting our retail price it isn't even considered at all. Every invoice going into the store is costed on the basis of a dollar and a half a case, or seventy-five cents per dozen.

Q. But your company does accept the ten cents per case from the Morton Salt Company. It doesn't send it back to them?

A. So far as I know that is accepted. It doesn't come through my department.

Q. You don't know what they do with it?

Mr. McBride: Mr. Examiner, we have been over this. The witness has indicated he, in his department, has no knowledge of it.

Trial Examiner Purcell: Is that an objection?

Mr. McBride: An objection to repetition.

Trial Examiner Purcell: The objection sustained.

By Mr. Haslett:

Q. Now, Mr. Sale, getting back to our original question which I would like to have an answer to, let us see if we can get this cleared up. You state that there are approximately 2,000 or more items in the super markets?

A. I do.

3045 Q. And that your company, if it was paying ten per cent more for each item than its competitor, the A. & P., and both were selling at the same price,—would that in any way affect your business?

A. Do you mean the volume?

Q. The profit.

A. I couldn't answer as to the profit. I wouldn't know what affect that would have. It depends on the type of merchandising that is done, and the flow of the higher profit paying items in proportion to the staples on which there is a lower margin.

Q. Could you assume, just for clarity of the record, there is no difference between the merchandising and the volume of your store and the A. & P. Tea Company store? Would you assume that, sir? Just assume that statement of facts as being true. There is absolutely no difference between the operating expense, and the cost of operating, the cost of doing business, between you and A. & P. except the fact that you are paying ten per cent more for your

requirements than A. & P. are paying. Now, could you answer the question.

A. You are using an assumption that isn't literally true with respect to the flow of merchandise.

Trial Examiner Purcell: You are asked, Mr. Witness, to assume what counsel says to be true. I put the question to you several times. Can't you make that as-
3046 sumption and undertake to answer counsel's question?

A. Well, I wouldn't know what the difference in profit would be.

By Mr. Haslett:

Q. Then your answer would really be that you don't know? is that right?

A. I wouldn't know what the difference would be on it.

Q. I asked if it wasn't a fact, assuming these things to be a fact.

A. I answered that when I said I didn't know what effect that would have on the profit.

Q. Do you know whether it would be an adverse effect?

Mr. McBride: If the Examiner please, I object to that. He says that he doesn't know what effect, and now counsel asked if it would be an adverse effect. I object to the question.

Trial Examiner Purcell: Objection sustained.

By Mr. Haslett:

Q. Mr. Sale, you stated that it was your opinion that if one of your competitors was selling salt at seven cents while, at the same time, you were selling it at nine cents that wouldn't in any way affect your business. Do you remember testifying to that?

A. I said if that was true we would be doing all of the volume of business in our super stores due to the two
3047 cents differential.

Q. What do you base that opinion on? Did you ever make any actual survey of it?

A. State your question again, sir?

Trial Examiner Purcell: Read the question.

(The reporter read the question.)

A. The fact our regular stores are doing an increasing volume since we have established the super markets.

By Mr. Haslett:

Q. In salt?

A. In all commodities.

Q. In salt?

A. I never made an individual survey of the stores on salt.

Q. Then you don't know of actual knowledge whether or not the two cent differential in price has any effect on your business or not, do you, sir?

A. I would get a report from the district managers covering their districts if it was having any effect, and they would ask for a price reduction.

Q. On salt?

A. Any commodity.

Q. I am talking about salt.

A. It might be salt or some other commodity.

Q. Have you ever received any such report?

A. Not on salt.

3048 Q. But you have competitors selling salt for seven cents. You sell it for seven cents yourself?

A. In our super stores we do, in our regular stores nine cents.

Q. Why do you have that differential in price?

A. The volume of business, and the super market set-up and price check with the type of super we compete against.

Q. That is a two cent differential in the price which is a great deal in connection with a nine cent item. Have you ever made any survey or study as to what effect the volume would have on the price, or is it just an arbitrary figure?

Mr. McBride: Will you read that question back, please?

(The reporter read the question.)

A. I have never made a survey as to the volume of salt business being done in the super stores as against the regulars.

By Mr. Haslett:

Q. Then your testimony is based on your opinion and estimates, is that correct?

A. My contact with the stores, talking to the managers, and the displays in the stores.

Q. And you talk to them about Morton's Salt, round package salt?

A. Yes, I have talked with them about Morton's
3049 Salt and other commodities as well.

Q. When was the last time you talked about Morton's Salt?

A. To an individual store?

Q. Yes sir.

A. When I go into a store to supervise a store I talk to them about commodities that are available in abundance, that you can continually receive a flow of those items, and those you can not receive in volume have restricted floor displays in the stores.

Q. Among which would be Morton's Salt, round package salt?

A. That is plentiful, and we let them order any amount they want to.

Q. I think that is all.

Re-direct Examination by Mr. McBride.

Q. Mr. Examiner, I have only one final question. I will try my hand at asking the same thing. If one company in the retail grocery business were to make a profit of $10,000 in the calendar year 1941 while another company in the retail grocery business in the same town or area made a $8,000 profit in the calendar year 1941, it wouldn't necessarily follow, would it, just because one company made $2,000 less in profit that they would have to go out of business?

Mr. Haslett: I object to that as immaterial and irrelevant to the issues in this case. We are dealing
3050 only with salt, and I think by cluttering up the record with these questions of other items and other profits and so on and over-all, it is misleading and precludes the Commission from determining the true facts with relation to what the man's volume is on salt alone.

Mr. McBride: Then, Mr. Examiner, if that is the allegation of the objection, may I inquire why all of the inquiries as to business generally, or profit on anything else on cross examination.

Mr. Haslett: I can tell you very shortly, sir.

Trial Examiner Purcell: Let us go off the record in telling it, please.

(Proceedings had off the record.)

Trial Examiner Purcell: On the record. The objection is overruled. You may answer. Read him the question.

(The reporter read the question.)

A. No.

Mr. McBride: I have no further questions.

Mr. Haslett: Do you know, Mr. Sale, whether or not your company makes a ten per cent profit on its net sales?

A. I wouldn't know that.

Mr. Haslett: That is all.

Mr. McBride: I have no further questions.

3052 JOSEPH ISIDORE HEBERT was thereupon called as a witness for the Respondent, and, having been first duly sworn, testified as follows:

Direct Examination.

Trial Examiner Purcell: All right, you may proceed, Mr. McBride.

By Mr. McBride:

Q. Mr. Hebert, will you state your name and address for the record, please?

A. Joseph Isidore Hebert. My home address is 2015 Calhoun Street, New Orleans.

Q. What is your business, Mr. Hebert?

A. I am the manager of Goodman and Beer branch of the Consolidated Companies, Incorporated, New Orleans.

Q. Are you the same Mr. Hebert who testified some months ago in this case as a witness on behalf of the Federal Trade Commission?

A. I am.

3053 Q. What is the type of business done by Goodman and Beer?

A. A wholesale grocery business.

Q. And they cover the city of New Orleans, do they?

A. And the country territory, the adjoining territory in the country.

Q. About how much of a radius do you cover, outside of the metropolitan area?

A. Oh, approximately around sixty miles, I would say.

Q. Do you employ salesmen in soliciting sales?

A. Yes, sir.

Q. In both the city and country territory?

A. Yes, sir.

Q. And do you extend credit and delivery service to your customers?

A. Yes, sir.

Q. And in addition, do you do some cash and carry business with your customers?

A. Some call business at the store, yes, sir.

Mr. Haslett: May we stop for just a moment?

Trial Examiner Purcell: Yes, off the record.

(A discussion off the record.)

Trial Examiner Purcell: On the record.

Mr. McBride: Will you read the last question and answer back, Mr. Reporter?

(The reporter read the question and an answer.)

3054 Q. Do you handle any products of the Morton Salt Company, Mr. Hebert?

A. We do.

Q. Will you specify the ones that you handle in your business, please?

A. We handle the Morton free running salt, and we handle some of the one and a half pound square packages, and a little of the bakers' salt.

Q. With respect to Morton's Blue Package Salt, do you know what the invoice price of this is?

A. The invoice price is one dollar and fifty cents.

Q. I believe you testified, Mr. Hebert, as a witness on behalf of the Commission, that you received a rebate or a price adjustment of seven and a half cents a case on the Blue Package?

A. Yes, sir.

Q. With respect to your resale prices, Mr. Hebert, for wholesaling in the city of New Orleans and surrounding territory, what price do you have per case on Morton's Blue Package?

A. Our list price is a dollar and seventy-five cents. However, competition makes us shade that price, and I believe that the average will be a dollar sixty-five to most of the trade, about a dollar sixty-five.

Q. And that has been true, has it, for a number of years?

3055 A. Yes, ever since I have been in the city.

Q. In figuring the resale price at a dollar seventy-five, which you say is the list price, what cost basis do you use in your computation, still having reference to the Blue Package?

A. We use a dollar and a half cost.

Q. Do the seven and a half cents rebate or price adjustment which you have referred to enter into your cost basis in figuring your resale price?

A. I don't consider it, no. I don't consider the concession.

Q. That would be treated how, simply as miscellaneous income of the company, or how?

A. Yes, that is credit that is given to us from our Plaquemine office. That is the headquarters office, Plaquemine headquarters office.

Q. In your wholesale house, Mr. Hebert, approximately how many grocery items do you handle, having in mind the total number of brands and sizes, and products of all producers, as to all types of commodities?

A. I don't know, but we handle everything in the grocery line, and a good many items in notions, and everything in the tobacco and candy line. I never did stop to figure them out, but we handle plenty.

Q. Would they exceed 1500 or 2000 items?

A. Oh, I guess it would reach up into 1200 items, 3056 I imagine, taking everything into consideration, of course.

Q. That would be about the way they would be handled over a period of years?

A. Yes, sir.

Q. They might vary a little above or below from time to time? Is that correct?

A. Yes, sir.

Q. With respect to your salt items of all producers and sizes, and all brands, will you state approximately how many salt items are handled by your company?

A. We handle salt from, I guess, about five of the companies. I think it is five, and then we handle their lines, their complete lines. Of course that means bulk and packages.

Q. All told, about how many items would those be, if you can count them up in your head, approximately?

A. You mean as to size?

Q. Including all sizes and all producers.

A. I would imagine about twenty-five, I guess.

Q. Of those twenty-five items, how many would be table salt items, if you can make the same mental calculation?

A. About, oh, what you would call package table salt, I would say about eight of them, or nine.

Q. On your description of table salt items, could you identify the type of item that you regard as a table salt item?

A. The one and a half package, and the special,
3057 what they call the special, like Morton's salt, or Hexagon, and items of that kind. It is all package salt.

Q. All package salt?

A. Yes.

Q. The balance of the items then would consist of bulk salt, and barrel salt, is that right?

A. Yes, of all sizes and kinds.

Q. Now, having reference, Mr. Hebert, to the table salt items only, of all producers, will you estimate from your experience with Goodman and Beer approximately the percentage of the total gross volume, in dollar and cents, done by your company, that is accounted for by the gross volume of business on the table salt items alone?

A. Well, that is a very very minor part. I don't know, but I don't imagine it would amount to over possibly about one per cent, or mightly little over that.

Q. That is of your total gross dollar volume?

A. Yes.

Q. Now, in determining the profits of your company, Mr. Hebert, what factors do you take into consideration? In other words, by that I mean, do you include overhead, and volume, and all of the rest, in determining whether or not your company has made a profit at the end of the year?

A. Well, what was that question again, please?

Trial Examiner Purcell: Read the question, please.

3058 (The reporter read the question.)

The Witness: Yes, sure.

By Mr. McBride:

Q. Would it be possible to determine whether or not your business was profitable simply by regarding the resale price alone, without taking into consideration those other factors?

Mr. Haslett: I object to that. I don't think the question is susceptible to an answer.

Trial Examiner Purcell: Off the record.

(Discussion off the record.)

Trial Examiner Purcell: On the recrod. The objection is overruled. You may answer, sir.

Mr. McBride: The reporter will read the question back to the witness, please.

(The reporter read the question.)

The Witness: Lets get that over again. I am just trying to get it.

(The reporter again read the question.)

The Witness: We couldn't tell by the price alone.

By Mr. McBride:

Q. In other words, Mr. Hebert, in addition to the resale price, you would have to know what your turnover was, your overhead, your cost price, and all of the other factors; isn't that correct?

A. It all enters into it, yes, sir.

3059 Q. I take it also that if you had only the cost before you, you couldn't tell from that whether your business was profitable or not, unless you also took into consideration all of those other factors; is that right?

A. That is the way we arrive at our figures, after everything has been charged off.

Q. Mr. Hebert, assume for the moment that you are paying a dollar and a half a case for Morton's Blue Package salt, while a competitor of yours is paying, we will say, a dollar forty per case for Morton's Blue Package salt. Would it follow from that alone that your competitor was making more on Morton's Blue Package salt than you were making, unless you knew also what his resale price was, and his overhead costs, and so forth?

A. Read that question over, please, sir.

(The reporter read the question.)

The Witness: I would have no way of telling.

By Mr. McBride:

Q. And would it be possible, Mr. Hebert, assuming that you were selling Morton's Blue Package salt, for a dollar sixty-five cents a case, while a competitor was selling it for a dollar sixty cents a case, for you to make more profit on Morton's Blue Package salt than your competitor was making, on that same item?

A. I don't think in this market, the way they work, no.

3060 Q. Let me ask you this: Does the mere fact that a competitor of yours might sell Morton's Blue

Package for a higher price than you sell it for, make it follow that he will make more profit than you will, still referring to Morton's Blue Package?

A. Read that over again.

Trial Examiner Purcell: Read the question.

(The reporter read the question.)

The Witness: I would presume that if he is selling it higher than I am, he is making more profit than I am.

By Mr. McBride:

Q. But if his overhead costs in handling the salt were greater than yours, then it might be less, he would make less profit than you did, even though his resale price was over yours?

A. That is right.

Mr. Haslett: Mr. Examiner, I object to this type of testimony, predicated upon an assumed state of facts of what another competitor is doing. I think Mr. McBride can ask a question, and give him the facts as they really are, or assume a state of facts and predicate his question on that, but not just base it on a number of cases of what a competitor is doing, and what his overhead cost is, and all of that. He doesn't know, this man doesn't know, what the overhead costs of his competitor is, and what is 3061 taken into consideration in the higher prices.

Mr. McBride: Mr. Examiner, I suppose I am entitled to the same scope of hypothetical questions that counsel for the Commission is entitled to. Other than that, I don't see that the objection has any merit.

Trial Examiner Purcell: I assume that Mr. Haslett's objection is not directed so much to the various hypotheses on which you are basing your question, as much as to the thought perhaps that the questions are objectionable because they are more or less leading, and then, too, my interpretation of a hypothetical question is one which must be based upon facts in the record.

Mr. Haslett: That is right.

Trial Examiner Purcell: When we lose sight of that, we are going far afield.

Mr. McBride: Then, Mr. Examiner, we have gone far afield, because there have been any number of hypothetical questions that have been based upon assumptions purely, and not based upon anything remotely resembling the facts in the record, and yet those hypothetical questions have been permitted. With respect to this particular question,

I think we have ample evidence in the record to indicate that there are some cases as low as a dollar sixty, and some sales as high as a dollar seventy-five.

Trial Examiner Purcell: That is true, Mr. Mc-
3062 Bride, but can't you so frame your question—I will allow you a proper latitude in the presentation and the asking of hypothetical questions, but can't you phrase them in a manner that will elicit the opinion of the witness as to the facts, without their being too nebulous in form?

Mr. McBride: Perhaps I missed the point, but what, for example, is nebulous about the last question? I used two sets of figures, and—

Trial Examiner Purcell: Well, you are asking this witness to suppose something about the overhead of a competitor—lets get off the record on this. Off the record.

(Discussion off the record.)

Trial Examiner Purcell: Back on the record. The objection is overruled. Give counsel his last question and the answer, please.

(The question and answer were read by the reporter.)

Trial Examiner Purcell: Proceed.

By Mr. McBride:

Q. Mr. Hebert, I believe you stated that your list price was a dollar seventy-five on the Blue Package, but that on the whole it was sold for a dollar sixty-five a case; is that correct?

A. Yes.

Q. Is the dollar sixty-five a case price, so far as you
3063 know, normally the price at which the Blue Package has been offered in the New Orleans area for the past five or six years by competing wholesalers?

A. I think so. That is why we use that price.

Q. With respect to the wholesale business, Mr. Hebert, does your company at all times have the lowest resale prices on all products offered by your company?

A. Certainly not.

Mr. Haslett: Would you read that question again please? I didn't get it.

(The question and answer were read by the reporter.)

Mr. Haslett: I certainly am going to object to that question, and move that the answer be stricken. How does he know his company has the lowest prices on all of the commodities he sells?

Trial Examiner Purcell: He says it doesn't.
Mr. Haslett: I thought he said it did.
The Witness: I said, "Certainly not."
Mr. Haslett: Oh, pardon me. I misunderstood.
Trial Examiner Purcell: Do you withdraw your objection?
Mr. Haslett: Yes, sir. I misunderstood him.
Trial Examiner Purcell: Let the record show that counsel withdraws his objection.

By Mr. McBride:

Q. Does your company at all times, Mr. Hebert,
3064 have the highest prices in the New Orleans territory on all of the commodities it offers?
A. Certainly not.
Q. In other words, on a part of your commodities you may be high, and as to part of them low, so far as the general market is concerned; is that correct?
A. Yes.
Q. Does your business depend then, Mr. Hebert, on being generally in line on all of its commodities that it offers in New Orleans territory, and by "generally in line," I mean as long as you are not too far out of line on too many products at the same time; is that correct?
A. Yes, sir. We have to be.
Q. In view of the fact, Mr. Hebert, that that is true, would your company lose any business simply because one item in the list of commodities which you handle is priced by you at a price above that of the general market?
A. What is that question please?
Trial Examiner Purcell: Read the question.
(The reporter read the question.)
The Witness: Well, —
Mr. McBride: — for that particular commodity, I mean.
Mr. Haslett: I object to that question, Mr. Examiner. I
don't know how the witness can possibly answer that
3065 question, whether or not his company is going to lose business by the fact that one item, not specifying any particular item, is higher or lower than that of a competitor. What could he predicate it on? I don't think the question is susceptible of an answer that would be acceptable.
Trial Examiner Purcell: Mr. McBride, make your statement for the record short, please.
Mr. McBride: Mr. Examiner, counsel himself has asked

that question times innumerable, as to whether or not the price of a particular item,—and he has selected salt as that item, or a particular salt item,—has any effect on the general business if it happens to be higher than a competitor, and again I am trying to bring out that in the general wholesale grocery business, such as that of this particular gentleman, that it might or might not follow that business would be lost if he were out of line on one item, and that you cannot determine the issues in this case, so far as injury to competition is concerned, by concerning yourself with one item alone, and lose sight of the general wholesale business as such.

Mr. Haslett: Mr. Examiner, may I make just a short answer to that observation? Counsel does not state my position correctly. When I did ask this witness and other witnesses the question, I confined it to salt,—

Trial Examiner Purcell: (Interposing.) I understand.

3066 Mr. Haslett: (Continuing.) —and I think, Mr. Examiner, that gross wrong can be done to both the Respondent and the Commission by allowing testimony to be put in of a general merchandising business, such as the wholesale grocery business, when we are primarily interested in salt. That is what we are interested in, and the Commission must determine from the facts in this record whether by the preferential discounts which are granted by the Respondent, competition has been injured in the line of business in which the Respondent is engaged, and not in the line of business in which the Respondent is engaged as to other commodities, but as to this commodity. I think that is very important.

Trial Examiner Purcell: I understand your position, Mr. Haslett. Mr. McBride, is it possible to confine yourself to the subject of salt, and is it possible further for you, in questioning your witness, to refer to definite price spreads, or differentials, or costs to the respondent, or selling costs, as the case may be, and not go into all of the ramifications of the various two thousand items which many of these wholesalers deal in?

Mr. McBride: Mr. Examiner. it is possible, but I don't think I should be required to, and I shall endeavor to cover the sort of testimony that I am seeking now, and not confine it simply to the question of salt, for the reasons that

I have stated once before. You cannot isolate salt out
3067 either the general wholesale or the general retail picture, and I am entitled to show that salt is only one item, and that it has only its general place in the entire business, and I am entitled to show further, by anything that I know of, under the Robinson-Patman Act, that the sort of testimony that counsel put on the record of necessity, if left alone, may possibly lead to some very, very perverted conclusions as to so-called injury to competition, and you asked me if I could confine myself to salt for the purpose of my defense, and my inclination is, and my understanding of the Robinson-Patman Act, and my answer to that, would be no, that I cannot.

Trial Examiner Purcell: Do you wish to be on the record, Mr. Haslett?

Mr. Haslett: No, sir.

Trial Examiner Purcell: Off the record, then.

(Discussion off the record.)

Trial Examiner Purcell: On the record.

Gentlemen, I am pursuaded, after a long argument pro and con off the record, that Mr. Haslett's position on this subject is the correct one, and that it would be unfair to the Commission to permit questions of this type to be asked of a number of witnesses, as Mr. McBride has given the Examiner to understand would take place in the future. If these questions can be confined strictly to the question of salt, the prices of salt, the effects upon competition,
3068 at which salt may be sold or purchased, then I think such testimony is germane, but to go into the ramifications of general merchandising habits, customs and policies of various wholesale and retail grocers with regard to all of the many products which they handle, I think would be an interminable inquiry, and one which could lead to no good results under the issues involved in this case. I will have to so rule.

Mr. McBride: Mr. Examiner, I note an exception to the ruling, and reserve my right to appeal at the conclusion of the hearing on the presently scheduled circuit of hearings.

By Mr. McBride:

Q. Mr. Hebert, if you were selling Morton's Blue Package salt at a dollar sixty-five a case, which you say is your general price in the city of New Orleans and sur-

rounding territory, and if a wholesale competitor across the street were selling Morton's Blue Package salt at the same time at a dollar sixty cents per case, but that as to all other commodities handled by your company, your prices for those other commodities were lower than the competitor's price, can you state whether or not you would lose business on Morton's Blue Package?

Mr. Haslett: I object to that, Mr. Examiner. I think counsel is, in the face of the Examiner's ruling, persisting in asking that type of questions as to other types
3069 of commodities.

Trial Examiner Purcell: Now, let me have that question again. Read it back, please.

(The reporter read the question.)

Trial Examiner Purcell: That is a little bit involved there. You have a negative in the middle of the question that I don't quite get. I will ask you to read it back again, please.

(The reporter again read the question.)

Mr. McBride: In order for clarity, let me reframe the question, although the purpose of it and the point of it will be the same. Let me avoid that pitfall of possibly an ambiguous question.

Trial Examiner Purcell: Very well.

By Mr. McBride:

Q. Mr. Hebert, I wish you to assume for the purpose of this question that with the exception of the Blue Package, Morton's Blue Package Salt, your prices on all other wholesale commodities handled by your company are lower than the prices on all other commodities handled by your competitor across the street, but that with one exception, namely Morton's Blue Package salt, your resale price is a dollar sixty-five, and your competitor's is a dollar sixty. Would it follow, under such circumstances, that you would lose the Morton's Blue Package salt business?

3070 Mr. Haslett: I object to that, Mr. Examiner. I think that is—

Trial Examiner Purcell: I will hear you off the record.

(Discussion off the record.)

Trial Examiner Purcell: On the record. The objection is overruled. You may answer if you know, sir.

The Witness: It would affect it in some cases, and in some cases it wouldn't.

By Mr. McBride:

Q. Can you describe, Mr. Hebert, the type of cases in which your business on Morton's Blue Package would be affected?

A. It would be affected in cases where the customer was technical, and insisted on buying all of the items at the cheapest price. The other type of customers, in some cases a small difference would not affect them; they would tell us to go ahead and put it in, even though they knew they could buy it maybe a fraction cheaper somewhere else.

Q. In other words, as to those types of customers that would examine the general over-all picture of all of your prices, including the price on that particular salt commodity, in determining whether they would trade with you or not, would go ahead and trade with you; is that right?

A. That is right.

Q. Now, Mr. Hebert, if a competitor of yours was
3071 selling Morton's Blue Package salt at a dollar sixty-five cents a case, and you were selling Morton's Blue Package salt also at a dollar sixty-five a case at the same time and in the same trading area, would your business be adversely affected if your competitor was paying a dollar forty-five a case, while you were paying a dollar and fifty cents a case?

A. Read the question, please.

(The reporter read the question.)

The Witness: I think not.

By Mr. McBride:

Q. In other words, as long as the resale price was the same, or approximately the same, you would still be able to get your same general volume on the item; is that correct?

A. If I had the same price as the competitor.

Q. And would it be possible, Mr. Hebert, under those circumstances, with you having a fifteen cent gross profit differential, and your competitor having a twenty cent gross profit differential, for you to make more net profit on the item than your competitor, if your overhead was less and if your turnover was greater than that of your competitor?

A. Will you read that, please?

(The question was read by the reporter.)

Mr. Haslett: Is this confined to salt?

Mr. McBride: Still referring to the example of salt in the previous question.

3072 The Witness: It is possible that I could make more money if my turn over was greater, and my overhead was less, certainly.

Mr. McBride: You may cross examine, Mr. Haslett.

Trial Examiner Purcell: We will take a five minute recess, with consent of counsel.

(There was a short recess.)

3073 *Cross-Examination by Mr. Haslett.*

Q. Mr. Hebert, you state that your costs of the round package blue label salt was a dollar and fifty cents a case. Is that your actual cost per case?

A. That is the cost. That is the billing price to us.

Q. That is not the cost, is it?

A. We receive seven and one-half cents credit from our headquarters office at regular intervals.

Q. Then the actual cost would be a dollar forty-two and one-half cents?

A. Yes sir.

Q. You stated that your general resale price of the round package salt per case was a dollar seventy-five cents, but that on occasions competition has forced you to sell it at a dollar sixty-five a case?

A. Our list price is a dollar seventy-five.

Q. You have, on occasions, sold it at a dollar sixty-five?

A. Yes.

Q. Why would you sell it at a dollar sixty-five?

A. Because of the competitors.

Q. You mean to meet prices?

A. To meet competition.

Q. To be in line with the competitor?

A. Yes.

3074 Q. Why do you do that?

A. Do that to get the business.

Q. Do that to get the business and to protect the business that you have?

A. That is right.

Q. If you didn't go to a dollar sixty-five you would probably lose the business, is that correct?

A. That is right.

Q. So a ten cent differential in price might mean the dif-

ference in losing the business and retaining it, is that correct?

A. Yes sir.

Q. I believe you said that in fixing your resale price of the round package of salt per case you didn't take in consideration the seven and one-half cent rebate that your company gets from the Morton Salt Company?

A. That is right.

Q. Now, why don't you take that into consideration?

A. Because if we get any concessions we try to let that revert into extra profit.

Q. Extra profit on the salt?

A. On the salt or any other item.

Q. Then your seven and one-half cents you consider an extra profit on salt?

A. It would be reflected finally in the outcome of
3075 the period, yes sir.

Q. Do you know what your company does with the seven and one-half cents when it gets it from the Morton Salt Company?

A. Yes, we get a credit for it from our company.

Q. What do you do, deduct it from the bill when you pay Morton?

A. We get the credit. Our general office credits our account. I presume they deduct it. They get a credit memorandum and pass it to us.

Q. You get the credit memorandum in Goodman & Beer's office here?

A. No, from Plaquemine. That is the head office of the company.

Q. The credit memorandum is transferred from Plaquemine to the Goodman & Beer's office?

A. Yes sir.

Q. And that shows up in the year's profit?

A. Yes sir.

Q. And that is considered as a year's extra dividend?

A. Naturally it reflects in it.

Q. You testified that table salt was a very minor item compared with the other commodities you sell to the retailer customers. Do you remember testifying that?

A. Yes.

Q. It is an important item, isn't it?

3076 A. I would think so, yes sir. I would hate to be without it.

Q. It is very necessary to have Morton's round package salt, isn't it?

A. Yes.

Q. Isn't there quite a consumer demand for that salt?

A. It along with the others, yes.

Q. You don't know of your own knowledge what it costs for one of your competitors to run his business, do you?

A. No sir.

Q. You haven't the slightest idea. Have you ever sold round package salt for less than a dollar and sixty-five cents a case so far as you know, sir?

A. I would think that possibly in some cases the boys might have taken a dollar sixty for some due to the competition, the competitive price.

Q. How long have you been in the wholesale grocery business, Mr. Hebert?

A. Since 1917.

Q. Well, that is a pretty good record. If Goodman & Beer were in the salt business only, selling Morton's round package salt only to the retailer customer, and it had one of its competitors across the street selling Morton's round package salt only, no other commodities, both of you in the same line, and the competitor was selling at a
3077 dollar sixty-five a case to your customers while, at the same time, you were selling it at a dollar seventy-five per case, would that in any way affect your business?

A. It certainly would.

Mr. McBride: Mr. Examiner, I object to that question. The question has been asked of previous witnesses and I have objected to it at that time and stated my grounds. In connection with the objection at this time I wish to point out in particular that it is precisely this type of question which makes it more than necessary, and more than right, on the part of the Respondent to bring this picture into some sort of sane focus in the wholesale and retail business. We are not concerned with the business, wholesale or retail, confined solely to the salt business or solely to Morton's blue package, but I believe the Examiner observed on the occasion of objections to certain of my questions, either on the record or off, I don't recall which, that hypothetical questions must be based at least somewhere near the facts that appear in the record. I simply call the Examiner's attention to that observation, and it certainly is as applicable here as it is to any other question that has been asked this

witness and a lot of other witnesses. I believe that question illustrates just about as clearly as any question has which the counsel for the Commission has asked this witness or any of the others, why, to use his language, it is
3078 unfair to the Commission, and to the Commission's case, to talk about the wholesale business and the salt end of it, because certainly it is prejudicial to the Commission's case because it brings it into focus, and if I am overruled on an objection that brings in only one element out of 2,000 items, you can get a most perverted sort of view of this picture. I would like that objection to be noted strenuously to the question in particular, and in relation to that type of questions.

Mr. Haslett: Mr. Examiner, we are primarily interested in salt in this proceedings, no other items, and I am using the figures that Mr. Hebert has testified about, and I am using them as to Morton's round package salt, and I am confining it to what is in the record. The fact that I have segregated the salt business from the other end of the grocery business strengthens my position, I feel.

Trial Examiner Purcell: Pardon me, Mr. Haslett, but there is enough argument on the record. I have already ruled on the question with the last witness, and the ruling stands despite the additional reasons given by counsel for the Respondent. The witness has already answered.

Mr. McBride: Mr. Examiner, in connection with this ruling I think it would be appropriate for me to ask counsel for the Commission what factual data there is in this record from this witness, or any other witness, on which to
3079 predicate a question that assumes this witness were in the wholesale salt business only. I think I am entitled to have that specifically, as long as we have that issue about hypothetical questions.

Trial Examiner Purcell: The answer to your request is that it doesn't lie within the power of the Examiner to compel counsel on the other side to answer the question.

Mr. McBride: I understand, but I simply make the request to which counsel may make the answer.

Trial Examiner Purcell: You have my permission but not my direction.

Mr. Haslett: Does the Examiner want my answer on the record or off of the record?

Trial Examiner Purcell: I don't want your answer at all. Mr. McBride asked for it.

Mr. McBride: On the record.

Mr. Haslett: Counsel has the record and has read it a number of times, and we are dealing, as I have stated on a number of occasions, with salt, and that is what we are primarily interested in, and I predicate the entire Commission's case on the salt industry, and especially as to the Morton Salt Company being the Respondent in this case. I think the question is predicated entirely on the record. There are numerous documentary pieces of evidence in the record which are the basis for the question, of several
3080 different selling prices, purchased at different prices, and getting rebates and discounts and so-called competitive adjustments.

Trial Examiner Purcell: Having reference to my ruling on the subject, I can not help but think that instead of Mr. Haslett having to deal with salt only as an infinitesimal part of the general merchandising set-up of the witness here, that he is entitled to assume for the purpose of illustration that if the witness was handling nothing else but Morton's blue package salt he could show price discrimination between this witness and any other competitor. I made that ruling simply on the well known and homely assertion that "the whole must consist of each and all of the parts." That isn't a matter of law. It is just a matter of common sense, it seems to me. It isn't any fine point of evidence involved in such a ruling as that. It is just common sense according to my light. I may be wrong, but for the time being my lights will have to rule.

Mr. McBride: Then, Mr. Examiner, assuming the whole consists of all of its parts, is the Respondent to be excluded from examining the whole in relation to all of its parts? I think that is where we come out on all of our argument this afternoon.

Trial Examiner Purcell: I say you may not examine on all of the 2,000 various items this witness carries in
3081 stock, but if you will confine your questioning to salt, or any part of the salt business of this and future witnesses,—and I do hope we will get this settled once and for all, whether I am right or wrong, and you have the right of appeal,—if you will confine your questions to salt I will permit you to go into all of the detail you think essential for the presentation of your case just as I am permitting Mr. Haslett to do at this time.

Now, we are using up an awful lot of record that I had hoped we would be able to avoid. I have permitted you

gentlemen to state your positions on the record because you have specially requested to do so. If it is in my power I am going to curtail further arguments on the record in accordance with Rule 17 in so far as I think it is proper.

You may proceed, Mr. Haslett.

By Mr. Haslett:

Q. Mr. Hebert,—

Mr. McBride: Wait, did he answer that?

Mr. Haslett: Yes.

Trial Examiner Purcell: Off the record.

(Proceedings had off the record.)

Trial Examiner Purcell: On the record.

Mr. McBride: Mr. Examiner, I wish to make a motion to strike the answer on the same grounds that my objection to the question is made, and to reserve my exception
3082 on the same basis.

Trial Examiner Purcell: The ruling of the Examiner is the same, for the same reasons. You may proceed.

By Mr. Haslett:

Q. Mr. Hebert, are you familiar with the policy of the Consolidated Companies?

A. Yes.

Q. Are you an officer of those companies?

A. No sir.

Q. Do you know why your company gets the seven and one-half cents rebate from the Morton Salt Company?

A. I understand on account of quantity purchases.

Q. Does your company purchase 5,000 cases of Morton round package salt during a twelve consecutive month period?

A. I wouldn't know.

Q. You don't know that?

A. No.

Q. Do you think your company is benefited by the fact it gets a seven and one-half cent allowance from the Morton Salt Company?

A. Bound to be.

Q. Mr. Hebert, you stated that if a competitor of yours was purchasing Morton round package salt at a dollar forty-five cents a case, and you were purchasing it at a dollar fifty cents a case, with both of you selling at the
3083 same price, that your business wouldn't be in any way affected. Do you remember testifying to that?

A. That is right, if we had the same price.

Q. What do you base that opinion on?

A. I think we can get our share of the business at the same price as the competitor.

Q. Isn't the price you pay for your commodity an important factor in your business?

A. Very much so.

Q. One of the most important factors, isn't it?

A. I would say yes.

Q. Do you think that Goodman & Beer Company could continue to stay in business if it purchased all of its requirements of various commodities at a higher price than its competitor?

A. I wouldn't think so.

Q. Then, confining it to salt alone, where the competitor is purchasing it at a dollar forty-five and you are paying a dollar fifty for it, you think that would have some effect on your business?

A. If a competitor was paying a dollar forty-five and I was paying a dollar fifty it wouldn't affect us except we would be making less profit than the competitor.

Q. You would be making less money than the competitor would be making?

A. That is right.

3084 Q. I believe on your direct examination to me, Mr. Hebert, you named some of your competitors here in this district. Are you in competition with the Interstate Wholesale Groceries?

A. Not this branch in New Orleans, no.

Q. The Consolidated Companies, some of its branches are in competition?

A. Yes.

Q. You say the seven and one-half cent rebate is given to your company on a quantity discount purchase?

A. That is my understanding.

Q. That is all, I believe.

Redirect Examination by Mr. McBride.

Q. I just have a few more questions, Mr. Hebert. As I understand it from your testimony the seven and one-half cent price rebate or adjustment simply goes into the general miscellaneous income of the Consolidated Companies?

A. Yes.

Q. It isn't credited particularly on the books of the company to salt or any other item; it is just a general miscellaneous income, so far as you know?

A. That is right.

Q. You have testified, Mr. Hebert, in answer to one of Mr. Haslett's questions that if your company paid ten
3085 per cent more for all of its commodities than a competitor did that your company might have to go out of business. Do I recall your testimony correctly on that?

A. That is about what I said.

Q. That wouldn't necessarily be true, Mr. Hebert, would it; if your turnover were greater or your cost of doing business were less than your competitor's, would it?

A. It wouldn't, without referring to any specific percentage, but if you were paying ten per cent—

Q. What I am trying to get at is this, Mr. Hebert; the mere fact that your company under this supposititious example here was paying ten per cent more for all of its commodities than one of your competitors, that fact alone wouldn't necessarily lead to the conclusion your company would have to go out of business unless you knew the volume, overhead, cost of doing business, resale price, and all of that, isn't that true?

A. Let us not use a specific ten per cent, because in our grocery business we look at ten per cent as kind of a general mark-up, but, if our company was to pay more for everything they bought I don't think they could exist.

Q. Do you know its cost of doing business might be more than enough less to offset that cost?

A. If the cost of doing business was that much less, to offset the increase we were paying, but, I don't think that is possible, of course.

3086 Q. You would have to take into consideration the other factors in addition to the cost price before you can answer that question, wouldn't you?

A. It all enters into the final analysis.

Q. Can you specify, Mr. Hebert, which of your competitors are selling at a dollar and sixty-five cents, referring now to the blue package?

A. I think most of the others in the city are selling at that price; that is my understanding.

Q. I think you named some of those competitors in your testimony as a witness on behalf of the Commission, so, that would be true of all of those persons you named at that time, is that correct?

A. Yes, generally.

Q. Of the various table salt items, Mr. Hebert, what is the fastest selling type of item in your particular company, referring to the branch in New Orleans?

A. The one and one-half pound square package.

Q. That is a faster selling item than Morton's blue package, so far as your branch is concerned?

A. Yes.

Trial Examiner Purcell: What is that question?

(The reporter read the question.)

By Mr. McBride:

Q. And that is due primarily to the consumer de-
3087 mand, is it, Mr. Hebert?

A. Yes sir.

Q. Are there a number of companies producing one and one-half pound squares, one and a half pound squares,—by that I mean producing salt companies?

A. They all do.

Q. By "all" you have reference to what companies?

A. Myles Salt Company, Jefferson Island Salt Company, Carey Salt Company, International Salt Company, and Morton Salt Company.

Q. All of those producing companies make and offer for sale a one and one-half pound square under various brand names, is that correct?

A. Yes sir.

Q. I have no further questions.

Recross Examination by Mr. Haslett.

Q. Mr. Hebert, do you know exactly what happens to the seven and one-half cents that you get from the Morton Salt Company on the round package of salt?

Mr. McBride: Mr. Examiner, I object to that on the grounds of repetition. I don't know how it can be developed any further.

Trial Examiner Purcell: I think you took it up again on your redirect.

3088 Mr. McBride: Yes.

Trial Examiner Purcell: You did. Very well. I will overrule the objection. Read the question to the witness.

(The reporter read the question.)

A. It is left in the profits of the company.

By Mr. Haslett:

Q. Is it credited to salt, to your purchases of salt from the Morton Salt Company?

A. No sir.

Q. Just in the general profit and loss statement of the company?

A. That is right.

Q. Is it regarded as an operating profit or a non-operating profit, or do you know?

A. It is regarded in the general outcome, and all of our profit is known as one. I don't know whether you call it operating or not. You got me there.

Q. It is just included in the general income of your company?

A. That is right.

Q. Do you get any rebate from the Morton Salt Company on your square package of salt of a pound and a half?

A. No.

Q. You don't, sir?

A. No.

3089 Q. I think that is all, sir.

Mr. McBride: I have no further questions.

Trial Examiner Purcell: This witness may be excused then.

(Witness excused.)

3090 Room 713, Pere Marquette Building,
New Orleans, Louisiana.
Tuesday, October 27, 1942.

Met, pursuant to adjournment, at 10:00 a. m.

Before:

James A. Purcell, Trial Examiner.

Appearances:

John T. Haslett, Esq., Attorney for the Federal Trade Commission.

L. H. McBride, Esq., 310 South Michigan Avenue, Chicago, Illinois, attorney for respondent.

3091 Mr. McBride: Mr. Examiner, I call as my first witness this morning, on behalf of the respondent, Mr. Morgan.

RYALL S. MORGAN, was thereupon called as a witness for the Respondent, and, having been first duly sworn, testified as follows:

Direct Examination by Mr. McBride.

Q. Mr. Morgan, will you state your name and address for the record, please?

A. Ryall, R-Y-A-L-L, S. Morgan, M-O-R-G-A-N. Do you want my home address?

Q. Your home address, yes.

A. 1646 St. Andrew.

A. 1646 St. Andrew.

3092 Q. New Orleans, Louisiana?

A. New Orleans, Louisiana.

Q. What occupation are you engaged in, Mr. Morgan?

A. Sales manager, A. & P. Food Stores.

Q. Sales manager of the A. & P. Food Stores in the New Orleans area?

A. In the New Orleans area, yes.

Q. And your office is located where?

A. 801 South Jefferson Davis Parkway, New Orleans.

Q. Is that identified as the New Orleans Territory Office of the A. & P. Tea Company?

A. The New Orleans Unit.

Q. The New Orleans Unit Office?

A. Yes.

Q. What is the geographical territory covered by the New Orleans unit?

A. Pensacola, Florida, extreme Southern Alabama, all of Mississippi except the northeastern corner, all of Louisiana except the northwestern corner, Texas from the southeastern and central parts.

Q. And as sales manager, your duties are what, Mr. Morgan?

A. Issue store instructions, setting retails, advertising.

Q. And those duties you observed with respect to the territory you have just described?

A. That is correct.

3093 Does the A. & P. Tea Company have any stores in the city of New Orleans?

A. Yes.

Q. Will you tell me the number of stores in New Orleans?

A. Thirty-three.

Q. Thirty-three?

A. Yes.

Q. Are they all of the same type?

A. No. Two types. Those classified as super markets, six, and as regular stores, twenty-seven.

Q. And then in addition, you have regular stores and super markets scattered throughout the territory you have described; is that correct?

A. Correct.

Q. Does the A. & P. Tea Company handle salt, Mr. Morgan?

A. Yes, sir.

Q. Approximately how many different types of salt items do they handle, referring now to the regular type store, in the New Orleans metropolitan area?

A. Well, of course there is different brands, and we are constantly shifting on some of the types, or different brands, but I would say five to six.

Q. Five to six.

A. Yes.

Q. Could you identify those five or six brands

3094 by type and name?

A. Well, there is Jefferson Island salt, square package, and Gordy salt, in the square package; Avery salt in the square package, Morton salt in the round package, and there is one brand that eludes me at the moment.

Q. Those are all table salt items?

A. Yes, sir.

Q. Does the A. & P. Tea Company handle any other commodities other than salt items?

A. A considerable number.

Q. A full line of retail grocery products?

A. Groceries, and in the larger stores, meats, produce and dairy products.

Q. Exclusive of all meats and dairy products, Mr. Morgan, approximately how many items in all would a regular store in the New Orleans territory handle, including in that the five or six salt items that you identified?

A. Well, —

Mr. Haslett: Just a moment. I object to that. Incompetent, irrelevent and immaterial to the issues in the case.

Trial Examiner Purcell: Let me hear the question, please, Mr. Reporter.

(The reporter read the question.)

Trial Examiner Purcell: Objection overruled.

3095 By Mr. McBride:

A. As an stimate, about two thousand.

Q. Now, with respect to the super stores, Mr. Morgan, approximately how many salt items would be handled in the super markets in the New Orleans metropolitan area?

A. Approximately the same.

Q. And that would be described as you described those for the regular stores, is that correct?

A. Yes.

Q. Including salt items, approximately how many commodities would be handled, including brands and sizes of all types, in your super markets?

A. A slightly larger figure than in the smaller stores. We will say approximately 2,500.

Q. In other words, you carry an additional variety in the super markets; is that right?

A. Yes, sir.

Mr. Haslett: I assume I have a continuous objection to this line of testimony, Mr. Examiner?

Trial Examiner Purcell: Yes, sir.

Mr. Haslett: Thank you.

By Mr. McBride.

Q. Does the A. & P. Tea Company in the city of New Orleans operate any retail store where the only thing that is handled is table salt?

A. No.

3096. Q. Have you ever had any experience with any retail store where the only commodity handled was table salt?

A. No.

Q. In other words, your experience as a retail merchant has been always in a retail store handling salt and all other grocery items; is that correct?

A. Correct.

Q. What is the price of Morton's Blue Package in the regular stores of the A. & P. here in the New Orleans metropolitan area?

A. Nine cents a package.

Q. Nine cents?

A. Yes.

Q. How long has that price been effective, if you know?

A. Better than ten years.

Q. And what is the price of Morton's Blue Package in the super markets in the metropolitan area of New Orleans?

A. Seven cents.

Q. How long has that price been in effect?

A. Since the establishment of super markets, in September, 1937.

Q. There have been no variations?

A. No variations.

Q. Mr. Morgan, you have identified five or six brands of salt of different sizes and qualities. Are those
3097 salt items all priced at the same retail price, or do they carry varying prices?

A. Varying prices.

Q. Can you state what the prices of those various salt items are, the retail prices in your regular stores? You have already identified the Blue Package as being nine cents. Do you recall the retail price of the other items?

A. Not exactly in every case. The Gordy here, and Jefferson Island, that I mentioned, in the city of New Orleans, is two and a half cents per package.

Q. As those items are retailed then, the retail prices are less in each case than the retail price of Morton's Blue Package; is that right?

A. Yes.

Q. Is the fact that you have a number of different types, and sizes, and brands, and qualities, and prices, on retail salt items, typical of the retail business? In other words, what you have said with reference to salt would be true as to other commodities; that is, you would have as to any given commodity, various types, and brands, and qualities and prices?

A. Gerenally speaking, yes.

Q. In other words, as in the case of salt, you might have a number of different varieties and qualities of cooked breakfast foods; is that right?

3098 A. Correct.

Q. And the same thing would be true in canned peaches, for example; you would have a number of sizes, qualities and prices on that?

A. Correct.

Q. And the same thing would be true of other items?

A. Correct.

Q. In the arrangements in your stores, Mr. Morgan, having reference now, for example, to a regular store in the New Orleans metropolitan area, would the various salt items you have described be grouped all together, or would they be scattered around the store, as a general rule?

A. The customary procedure would be to have them in the same location, generally.

Q. So if the housewife went to look for salt, she would find all of your salt items generally grouped in one section?

A. Correct.

Q. Is that likewise generally typical of your general layout of your stores, that various brands and sizes of any particular commodity would be grouped together?

A. That is true, unless there is a special display rack, or something like that, but ordinarily the canned fruits, or canned vegetables, would be in adjacent sections; that is, the stock would be in approximately the same spot in the store.

3099 Q. So that with that group then, the various sizes and qualities and prices of salt items, the grouping in a sense competes for the housewife's eye and purchase money; is that correct?

A. I think that would be the reaction on her part.

Q. I want to get some details, Mr. Morgan, with respect to retail practices. Can you identify, generally speaking, again using for an example a regular store in the New Orleans metropolitan area, what is usually deemed to be the best selling or display space in the store? In other words, is it in front of the cash register, or in front of the main door, or where would it be?

A. That would vary almost with every store.

Q. I see.

A. It would be difficult to state that any one spot was the best in any store. There might be several spots. It would depend on, you might say, the ease with which the customer saw it. That is, the more obvious it is, the more easily seen, the better the sales space.

Q. Then let me ask you this: Is there in each store what you would regard, from your merchandising experience, some spot which would be a better selling or display spot than other spots in that store?

A. In the self-service stores, you might say the shelves nearer the eye level would possibly be better than the 3100 shelves nearer the floor.

Q. Then, if I may take an example, would the display space back in a far corner of the room, near your warehouse door, or your storage door, have better display appeal than space out in the center islands in that store, or would it be a worse display space?

A. Well, ordinarily it would be a worse display space.

Q. If we may take this example, Mr. Morgan: Supposing you had in your regular store, Morton's Blue Package salt at nine cents a package, and during one calendar month, or one calendar week, I will say, you had a display out in one of these center islands, and then the following week you were to take that display off, and return it to, say, a shelf in the far rear corner of the store. All other things being equal, would you get a greater volume during the first week than you would the second week on the Blue Package?

A. Undoubtedly.

Mr. Haslett: Mr. Examiner, we object to that, and note an objection to all of this line of testimony as to various spots in stores being better than other spots. There are so many factors and elements to be taken into consideration, where the store is located, and the outlay of the store, the size of it, the entrances, where the cash register

is located, and so many different elements, that to clutter up the record with this type of testimony, I think, is misleading.

3101 Trial Examiner Purcell: All right. Now, Mr. McBride, I have been listening very attentively. Maybe you would care to enlighten the Examiner before you continue on with this line of interrogation, as to what your object is?

Mr. McBride: Yes, sir, I am perfectly willing to.

Trial Examiner Purcell: Would you do so for the record, please?

Mr. McBride: Mr. Haslett in his examination of witnesses on behalf of the Commission has constantly and continuously emphasized nothing but price, and it is my position that it is a part of the defense in this case in showing that Mr. Haslett cannot, nor can the Commission, properly view this case by having only the retail price alone, or understand whether or not an injury has or has not taken place. Now, on yesterday there was a lot of objection to certain types of questions. I am endeavoring to the best of my ability to tie all of this in with salt, and I propose to show that you cannot regard price alone; that there are dozens of factors that enter into the merchandising proposition, and that the moment it is left open on the record that price is the only consideration, then at that moment the whole record is perverted, and you get the most unrealistic viewpoint of retail merchandising that you can possibly get, in relation to the salt business, and more particularly Morton's Blue Package salt. This morning, instead of asking general

3102 questions, and I am not retreating from my position that I have a right to ask general questions, I am endeavoring by specific examples to show how these elements enter into the retail merchandising of salt, in particular.

Mr. Haslett: If that is counsel's position, Mr. Examiner, I make a further and more strenuous objection to this line of testimony, predicated upon the charges of the complaint. The respondent is charged with discriminating in price in the sale of its salt. This is not an economic act. The economics do not enter into it at all. It is a legal act. It states that the respondent has sold to customers, in competition one with the other, at different prices, as a result of which competition has been injured. The

respondent has, as the Act provides, various defenses, and the defenses that the respondent is availing, or attempting to avail, itself of is not in accordance with that provided for in the Act, and I think it is immaterial, irrelevant, incompetent and highly prejudicial to distort the true facts in this case. There are the charges in the complaint, and that is what we have to go on, and not go outside the borders of that complaint.

Trial Examiner Purcell: Yes, and in addition to which, it is the respondent here who is charged with discrimination in price, not to the housewife, selling it at retail, but selling it to the retailers or wholesalers, as the case
3103 may be. Isn't that true?

Mr. Haslett: That is correct.

Trial Examiner Purcell: Nevertheless, I am not prepared to differ with counsel for the respondent at this time as to what he conceives to be a true defense, and in justice to him I am going to let him put it on. If, as you say, Mr. Haslett, it has no place in this case, then the record cannot possibly be distorted by it, because it may all be disregarded. Nevertheless, I think it would be very dangerous for me at this time, at this late time, to preclude the respondent.

Mr. Haslett: Mr. Examiner, I want to reserve a motion to strike this line of testimony. If this is the beginning of an accumulation of testimony showing that the economics of merchandising is a defense to a charge of price discrimination, there are so many elements in it—

Trial Examiner Purcell: Yes, we have gone into that, Mr. Haslett.

Mr. Haslett: (Continuing.) —that in the cross-examination of this witness, it will take from now until Monday, because I don't intend to sit idly by and have this witness give testimony as to the merchandising of particular products in a store predicated upon the entire operations of A. & P.

Trial Examiner Purcell: You have made your
3104 position very clear, and you have your reservation granted to you, sir, and at the proper time you may urge your motion to strike. You may continue.

By Mr. McBride:

Q. Now, Mr. Morgan, assuming still the regular store of A. & P. here in New Orleans, in the metropolitan area, and assume, if you will, that weekly on Fridays for four

straight weeks, you advertised for this regular store, Morton's Blue Package salt at nine cents a package, and that then for the next four weeks, you did not advertise Morton's Blue Package at nine cents a package, or at any other price. Will you state whether or not in your opinion the volume of sales on Morton's Blue Package salt would be greater the first month than the second month, or the reverse?

Mr. Haslett: I object to that, Mr. Examiner.

Trial Examiner Purcell: Off the record, Mr. Reporter.

(Long discussion off the record.)

Trial Examiner Purcell: On the record. There is no objection pending before me.

Mr. Haslett: Yes, sir, there is. Would you listen to the last question, please, sir?

Trial Examiner Purcell: Yes. Let the record show a long discussion off the record.

(The reporter read the last question asked.)

3105 A. That is rather difficult to make an exact statement on. There is certain fundamental basis for believing that advertising would increase the sale of any item more or less, regardless of price, and if I may revert to the display matter, Mr. Examiner,—

Trial Examiner Pursell: Not in connection with this question, sir. Your question is specific, and you will confine your answer to that, if you please.

The Witness: Yes, sir.

By Mr. McBride:

Q. You do advertise salt items from time to time in the New Orleans metropolitan area, do you, Mr. Morgan?

A. Yes.

Q. What is the purpose of advertising salt items?

A. To increase the sale.

Q. To increase the sale of those salt items?

A. Yes.

Q. And over a long period of years the A. & P. Tea Company in the New Orleans area has continued to advertise salt and other items; is that correct?

A. Correct.

Q. That has been done on the basis of its experience that by advertising, it has successfully increased the sale of the items advertised?

A. Correct.

3106 Q. Mr. Morgan, I would like to have you make this assumption with respect to Morton's Blue Package. I wish you to assume that we have on one side of the street a regular store of the A. & P. Tea Company, in the New Orleans area, and that across the street is another store, which is competing for the same business. Both stores handle Morton's Blue Package. Would it be possible, in your opinion, based on your experience in the retail business, for the A. & P. Tea Company to maintain as high or a higher volume at nine cents on Morton's Blue Package, by displaying it openly in its store, than the volume of the competitor across the street, if he carried the Morton's Blue Package at seven cents, and in a far back corner of that store?

Mr. Haslett: I object to that.

Trial Examiner Purcell: The objection is overruled.

The Witness: May I have that read again, please?

Trial Examiner Purcell: Read the question to the witness.

(The reporter read the question.)

The Witness: The only answer I can give to that is that we do have sales at the nine cent price in New Orleans and other towns where our competition, I assume, having super markets, have a lower price.

By Mr. McBride:

3107 Q. And your sales are kept up on the Morton's Blue Package at nine cents per package; is that correct?

A. Correct.

Q. And it is also true, is it not, that the Morton Blue Package sales have kept up at nine cents while displayed in the same general position of the store as other salt items at lower prices; is that right?

A. Correct.

Q. Mr. Morgan, do you know of any given time in the city of New Orleans, referring to the metropolitan area, where the prices of A. & P. Tea Company have been lower on all salt items than the retail prices of all other retailers on those same salt items?

A. Do you have reference to Morton's salt only, or to all salt?

Q. No, all salt items. In other words, take any given time, has the A. & P. ever had lower retail prices on all

table salt items than all other retailers in the New Orleans territory?

A. I wouldn't be able to make any definite answer to that.

Q. Would your answer be the same if I were to ask you as to whether or not the prices have ever been higher in your stores than the prices of other retailers at any given time, on salt items?

A. No, I cannot safely answer that.

Q. In other words, so far as you know, your retail
3108 prices on salt items may be higher or lower, or part higher and part lower, than that of your competitors in New Orleans; is that correct?

A. That is correct.

Q. And that would be true not only of salt items, but of all other commodities; is that right?

A. Right.

Q. Does the A. & P. Tea Company depend upon any particular for its merchandising success in staying generally in line on salt items, and generally in line on all other commodities that it handles?

A. Oh, well, that would be generally true, yes.

Q. That would be essentially true of any successful retail business; isn't that correct?

A. Yes.

Q. Now, on the basis of your retailing experience, Mr. Morgan, can you state whether or not, in your opinion, if a shopper were to come into your store,—and I am referring now to a regular store,—in New Orleans, and found that the prices on all of the commodities which that store carries are lower than the prices of all competing retailers, with the exception of Morton's Blue Package, but as to that one item alone, your price on Morton's Blue Package is one cent higher than the competitors', would that housewife necessarily refuse to trade at that store, by reason
3109 of the one cent differential in the price of that Morton's Blue Package?

A. That question would be hard to say, what any one individual would do. The fact that our prices in many cases may be above competition, and the customer still trades with us, would be the only answer I could say as to that. I wouldn't speak for any one individual.

Q. Mr. Morgan, with reference to Morton's Blue Package salt, do you know what price any of the competing re-

tailers in the New Orleans area are paying the Morton Salt Company for the Blue Package salt, or any other source of supply they might have for it?

A. No, I do not.

Q. Would your answer be the same with respect to all salt items?

A. Correct.

Q. And likewise, to all commodities that A. & P. handles?

A. That's right.

Q. So that, so far as you know, the A. & P. Tea Company may be paying more or less than its competitors for any given item, salt or otherwise; is that correct?

A. Correct.

Q. Mr. Morgan, if a competitor of A. & P. Tea Company were paying less for merchandise, or for Morton's Blue Package salt, than A. & P. Tea Company were paying, but the retail price was seven cents in that competitor's
3110 supers, and nine cents in that competitor's regular stores, would that necessarily affect your business in any way, with the retail prices the same as yours?

A. I can see no effect on it.

Q. In other words, your volume, you would presume, would stay up as long as the retail prices were the same as between the two companies; is that correct?

Trial Examiner Purcell: What is the answer, please?

Mr. Haslett: I have an objection. If this witness can testify from actual knowledge, I have no objection. If it is just an estimate, I don't want it.

Mr. McBride: Don't show this in the record, please, Mr. Reporter,—

Trial Examiner Purcell: Off the record, at the request of counsel for the respondent.

(Proceedings had off the record.)

Trial Examiner Purcell: On the record.

Mr. Haslett: Do you mind if I take him on voir dire?

Mr. McBride: Yes, I do, right at this moment.

Mr. Haslett: You say you do?

Mr. McBride: Yes, I will withdraw the question, Mr. Examiner.

Trial Examiner Purcell: You withdraw the question?

Mr. McBride: Yes, the question to which objection has been made, which is the last question only, I understand.

3111 Trial Examiner Purcell: The last two questions.

Mr. McBride: The objection was not made to the first question, Mr. Examiner, and the witness answered it.

Mr. Haslett: Well, both questions are so related that one without the other means practically nothing, if you will listen to the two questions again.

Trial Examiner Purcell: Mr. Reporter, will you read—

Mr. McBride: (Interrupting.) Mr. Examiner, there was no objection made to the first question, however related they may be. Counsel missed the boat, to use his own language, in not objecting to the first one. The objection was made to the second question only.

Trial Examiner Purcell: Counsel, we are on the record, and let us confine our language properly, please.

Mr. Reporter, please read the last question of counsel addressed to this witness.

(The last question asked was read by the reporter.)

Trial Examiner Purcell: Now, I will ask you, Mr. McBride, if that question, in and of itself, makes sense? Especially, when your predicate as to the question propounded is in the preceding question, that there was a differential in price paid by the respective parties?

Mr. McBride: Mr. Examiner, I offered to withdraw that particular question, and he suggested that both
3112 be withdrawn, and I am refusing to withdraw the preceding question. I am now prepared to withdraw the question to which objection was made.

Mr. Haslett: I have a continuing objection to all of this line of testimony, and it is so noted in the record, Mr. Examiner.

Mr. McBride: Do I understand that you regard this line of testimony as the same that you objected to about a half hour ago?

Mr. Haslett: That is right, the whole line of testimony.

Mr. McBride: I see.

Mr. Haslett: I have a running objection to all of it.

Mr. McBride: All right.

3113 Trial Examiner Purcell: There is nothing before the Examiner on that point at the present time so a ruling is not necessary.

I am asking you, Mr. McBride, what disposition you wish to make of the preceding question? Your last question was put to the witness in more or less rapid fire fashion and the objection was immediately forthcoming from counsel

for the Commission, even before the witness undertook to answer the last question, so, I am disposed to consider that the objection is directed to both questions. Now, if you are not disposed to withdraw the question then I will sustain the objection and allow you to except.

Mr. McBride: I would like the record to show that the objection was made only to the last question, which is the one I offered to withdraw. It wasn't made to the next preceding question, nor was there a motion to strike the answer to that preceding question, and the Examiner has nothing on which to rule with respect to the preceding question, and I will take an exception to the ruling.

Trial Examiner Purcell: The exception is granted. We have enough on that.

By Mr. McBride:

Q. Mr. Morgan, you testified about the beginning of your session that you set the retails in the stores throughout the area which you describe as being in the New Orleans unit. Will you describe briefly what you mean by "setting the retails"?

3114

A. Deciding at what prices the merchandise is to be sold for in the stores.

Q. In other words, it is your responsibility to set the prices on all commodities, or have them set by people under your supervision, for the stores in the New Orleans unit?

A. That is correct.

Q. That has been your duty since you have been sales manager, is that correct?

A. Correct.

Q. When did you first become sales manager of the A. & P. Tea Company in the New Orleans area?

A. December, 1939.

Q. Were you associated with the A. & P. Tea Company prior to that time?

A. For ten years.

Q. In the sales department?

A. No, in the office, the general office.

Q. In the general office in New Orleans?

A. No, Charlotte, North Carolina, and in New Orleans. In New Orleans as office manager.

Q. Referring specifically to the retail prices of both the regular stores and the super markets in the metropolitan area of the City of New Orleans, do you set, or have

3115 the responsibility of fixing, the retail prices of the A. & P. Tea Company in all of those stores? Is that correct?

A. Correct.

Mr. Haslett: Mr. Examiner, at this time I would like to take the witness on the voir dire.

Mr. McBride: Mr. Examiner, I don't know on what occasion we are to have a voir dire at this stage.

Mr. Haslett: I don't know of any rule of evidence that precludes me from taking the witness on the voir dire whenever any question comes up as to the qualification of the witness testifying as to the prices.

Mr. McBride: I haven't yet asked this witness any questions on prices since having him describe in more detail what his duties were, and I object.

Trial Examiner Purcell: The motion to take the witness on the voir dire at this time is refused. Counsel for Respondent is in the midst of his attempted qualification of this witness, and I see no reason for interfering. You may proceed.

By Mr. McBride:

Q. As a part of your price fixing duties for the retail stores of the A. & P. Tea Company, do you set the prices on Morton's blue package salt?

A. Yes.

Q. Is that also true of all of the other salt items
3116 that are handled by the A. & P. Tea Company stores in the New Orleans metropolitan area?

A. Yes, sir.

Q. You are familiar, are you, with the retail prices of all salt items in the A. & P. Tea Stores in the New Orleans area, referring to the metropolitan New Orleans area?

A. Yes.

Q. That is also true of the other commodities in so far as your memory can carry you as to the prices of the several hundreds of items, is that correct?

A. Yes.

Q. Do you keep and maintain as a part of the records, any records of the retail prices of salt items and all other commodities for the A. & P. Tea Stores?

A. Yes, the retail price book.

Q. And that you maintain and have access to at all times in your work, is that correct?

A. Correct.

Q. Now, Mr. Morgan, I return to my previous question.

Mr. Haslett: Are you through now with the qualifications?

Mr. McBride: Mr. Examiner, I hate to be technical, but I take it voir dire comes if and as and when I ask a question on which counsel doubts the qualification of this witness, and I haven't yet asked a question.

3117 Trial Examiner Purcell: Proceed, please, Mr. McBride.

By Mr. McBride:

Q. Mr. Morgan, returning to my original question, if a competitor of the A. & P. Tea Company operating both super markets and regular stores in the New Orleans metropolitan area sold Morton's blue salt at seven cents at the super stores, that being the same price as A. & P. Tea Company sold Morton blue salt at the super stores, and at nine cents at its regular stores, that being the same price as in the regular stores of the A. & P. Tea Company, would your company be injured in any particular way, or adversely affected, if that competitor paid less for the blue package than A. & P. paid for it?

Mr. Haslett: I object.

Trial Examiner Purcell: State the grounds of your objection.

Mr. Haslett: I object to it on the qualifications, and I would like to have the witness on the voir dire.

Mr. McBride: No objection.

Trial Examiner Purcell: You may proceed and have him on voir dire.

Voir Dire Examination by Mr. Haslett.

Q. Mr. Morgan, I understand that you set the retail prices on all of the commodities sold in all of the A.
3118 & P. Stores in the State of Louisiana?

A. No, I didn't state that. I do not operate the stores in northwestern Louisiana.

Q. You set them in New Orleans?

A. Correct.

Q. What is taken into consideration by you in arriving at the retail price of Morton's round package salt?

A. I can't answer that question because I haven't had

occasion to ever change the retail price of Morton's Salt since the time I have been sales manager.

Mr. Haslett: Mr. Examiner, I want to make a motion to strike all of this witness' testimony in regard to such testimony, in regard to such prices; he hasn't set the prices; he doesn't know what is taken into consideration in arriving at such prices.

Trial Examiner Purcell: You are confining your motion to strike to the Morton Salt item?

Mr. Haslett: That is right, sir.

Trial Examiner Purcell: Not as to the other things?

Mr. Haslett: That is right.

Trial Examiner Purcell: Because under the Examiner's ruling yesterday they don't enter into the controversy.

Mr. Haslett: Yes, sir.

Trial Examiner Purcell: I will hear from you.

3119 Mr. McBride: Frankly, I am amazed at the motion. I suppose there are a lot of companies and a lot of retail stores that don't vary their prices on particular items from one year's end to the next, or for a period of years. Now, the mere fact that this witness, who has literally scores of stores under his jurisdiction, and is charged with the responsibility of setting the retail prices, has not had occasion to change the price on the blue package, and that mere fact alone, disqualifies him to testify about anything about Morton's blue package, and I presume according to counsel's motion about any salt items or anything else he testified about, is a most amazing motion in my humble opinion.

Mr. Haslett: I made the motion as to Morton's blue package.

Trial Examiner Purcell: On the theory, I imagine, this witness has merely carried on the policy laid down by his predecessor on Morton's blue can salt?

Mr. Haslett: He doesn't know the policy, or what was carried on. He doesn't know anything about what he predicated the retail price on.

Trial Examiner Purcell: Now, what I am saying, he is simply carrying out the prices fixed by his predecessor.

Mr. Haslett: That is right, sir.

Trial Examiner Purcell: Therefore he isn't competent to testify on this particular item?

3120 Mr. Haslett: That is right, sir. That his predecessor would be the one to testify.

Mr. McBride: I may observe further for the record here—I don't even know how to state it, Mr. Examiner,—what I am trying to get at is this, a witness who has enough qualifications to hold the position he has must certainly be able to testify as to whether or not in his opinion, that is the last question I asked of him, parity in resale price would have any effect on his business if there was not parity in the purchase price. What difference would it make if he had fixed it at seven or nine cents himself? It is even difficult for me to put my thumb on the fallacy of that objection.

Trial Examiner Purcell: We will have a five minute recess.

(There was a short recess.)

Trial Examiner Purcell: On the record.

Mr. McBride: Mr. Examiner, before you make your ruling I would like to ask this witness another series of qualifying questions with the understanding then upon the completion of those additional questions I shall once more return to the question that precipitated the argument, and with the understanding that the Examiner will rule on the motion.

Trial Examiner Purcell: And with the reserved 3121 right of the attorney for the Commission to resume voir dire in case the questions bring up any additional subject?

Mr. McBride: Yes.

Trial Examiner Purcell: You may proceed.

By Mr. McBride:

Q. Mr. Morgan, since you have been sales manager of the New Orleans unit of the A. & P. Tea Company have you ever reviewed the nine cent and seven cent price on Morton's blue package?

A. Yes, I reviewed the prices we had in our book.

Q. You reviewed the prices, and the price on all other commodities, is that correct?

A. Correct.

Q. Out of those 2,000 items you carry in the regular stores, have you had occasion to set any retail prices on any of those 2,000 items since you have been sales manager?

A. Yes, a great number of them.

Q. Do you know what factors are taken into consid-

eration in setting the retail price of those you have set since being sales manager?

Mr. Haslett: I object to that, Mr. Examiner, on the grounds of the Examiner's ruling of yesterday that the setting of a price of other commodities has no materiality as to the issues in this proceeding.

Mr. McBride: If given an opportunity, Mr. Ex-
3122 aminer, and in endeavoring to qualify this witness as to what I thought was obvious, that he does know the factors that go into the setting of prices, and in view of counsel's objection that he isn't qualified because he didn't happen to set, or reset, the blue package price, I shall first proceed to find out whether he knew what factors were taken into consideration on those prices he did set, and then whether or not he applied those factors in connection with his review of the Morton blue package price, and I would assume from that his test of the Morton blue package price would be as complete and as accurate as if he had set it himself.

Trial Examiner Purcell: For the purpose of qualification of this witness I don't think the question violates the ruling of the Examiner made yesterday. I think counsel for the Respondent has very properly asked this witness if all of the factors going into the setting of all of the retail prices, if it be a fact, are the same with regard to them as it would have been with regard to the Morton Salt price if he had undertaken to set its price himself. I think that would be sufficient qualification of the witness. Now, if the factors are different, if Morton's Salt is in a class by itself, so to speak, then I take it that up to the present time this witness has not been qualified. I think you can do that, Mr. McBride.

Mr. McBride: I believe you have an objection
3123 before you.

Trial Examiner Purcell: The objection is overruled for the time of being.

Mr. McBride: Will you read the question back, please?

(The reporter read the question.)

A. Yes, that is a prerequisite of the job.

By Mr. McBride:

Q. Will you describe what those factors are, Mr. Morgan?

A. Cost, transportation cost to the various parts of

the territory as affecting additional store delivery cost, and the type of operation such as the overhead expenses.

Q. What would be included in the overhead; rent, light, clerk hire?

A. Rent, light, clerk hire, all of which are affected by volume.

Q. Were those same factors taken into consideration by you in setting the price of all of the commodities on which you have been called upon to set the price for the first time since you have been sales manager?

A. Prior to the O. P. A. Rules and Regulations. Of course, retails must conform to those regardless of other factors.

Q. In reviewing the retail price of the remaining 2,000 items, referring to the regular stores, since you have been sales manager, did you review and test each of those retail prices in the light of those same factors you
3124 have just described?

A. Yes, I had occasion to check the book generally; I don't mean as to reviewing the rates on the items, but if it was deemed advisable to raise or lower them I have done so.

Q. If you were to set, or reset, the price on any commodities out of the 2,000 on which you have not specifically set them yourself, would you set or reset those prices on the basis of the same factors you have just described?

A. Yes sir.

Q. Under O. P. A. Regulations, of course?

A. Yes.

Q. Would that be true specifically with regard your testimony as to the blue package?

A. Yes.

Q. You would take, in reviewing Morton's blue package price of seven and nine cents, did you take into consideration the cost, the transportation cost, the overhead items, the volume, and the type of store for which the price was being examined?

A. Yes.

Q. Having done so did you conclude not to change the seven and nine cent price of Morton's blue package?

A. Yes, there was no reason for me to change them.

Q. In other words, tested by those factors you concluded to leave the price of seven cents and nine cents,
3125 is that correct?

A. Correct.

Q. Would your testimony be the same with respect to the other salt items?

A. Yes.

Q. Now, once more I return to my question.

Mr. Haslett: I would like to have him on the voir dire.

Mr. McBride: I am sorry—

Trial Examiner Purcell: Off the record.

(Proceedings had off the record.)

Trial Examiner Purcell: Let the record show that counsel for the Respondent agrees to permit counsel for the Commission to re-examine the witness on the voir dire.

By Mr. Haslett:

Q. Mr. Morgan, do you know the price which your company pays the Morton Salt Company for its round package salt?

A. Not at the moment, no.

Q. Do you know what discount your company gets from the Morton Salt Company?

A. No, I don't. It is a question of reviewing the cost from our stock department, the net cost. I have no contacts with the discount at all.

Q. Do you know what it costs to transport the Morton blue package salt from your warehouse in New Or-
3126 leans to your various retail outlets throughout the state?

A. Not specifically as to cents per case.

Q. You don't know how much it costs per case?

A. I know salt is a heavy item with relation to its retail value.

Q. But you don't know what it costs?

A. Not specifically to the cent. That would vary in different parts of the territory.

Q. You never made any survey to determine that, have you, sir?

A. No.

Mr. Haslett: Mr. Examiner, in view of the fact that he doesn't know the price which his company pays for the salt, the cost of transporting that salt from the warehouse to the various retail outlets, and the fact that he doesn't know what discount his company receives from the Morton Salt Company, which would be reflected in the cost, I then press my motion to strike the last question and answer.

Mr. McBride: I have no comment. Counsel's argument speaks for itself.

Trial Examiner Purcell: Let us go off the record.

(Proceedings had off the record.)

Trial Examiner Purcell: On the record. The objection of counsel for the Commission is sustained, and the
3127 motion to strike of the attorney for the Commission all testimony of this witness as to the fixing of the prices of Morton's Salt products, and particularly the blue can at seven and nine cents each, is hereby granted for the reasons stated in the motion.

Mr. McBride: I want this on the record, please. If I may understand the ruling correctly, counsel for the Commission placed two things before the Examiner; one an objection to the question about the maintenance of volume between A. & P. Tea Company and its competitor at a seven and nine cent comparative price, and a motion to strike the answer to that question; and I understand as to the objection and that motion that has been sustained and granted respectively by the Examiner on the grounds this witness is not a qualified witness; is that correct so far as that question and answer go?

Trial Examiner Purcell: That is right.

Mr. McBride: I also understand counsel for the Commission is still pressing his motion to strike all of this witness' testimony regarding Morton's blue package for such miscellaneous reasons as are scattered through the recent pages of the record, and that motion too has been granted by the Examiner, on what grounds I don't know, on the grounds of lack of qualification?

Trial Examiner Purcell: No. The reason for that,
3128 Mr. McBride, was that this witness had never set the price on Morton's Salt products, and the motion of the attorney for the Commission was confined to that and doesn't affect his motion to strike originally reserved by him, as I understand it, at the outset of the examination of this witness. Is that correct?

Mr. Haslett: Yes, sir, that is correct. It goes to the fixing and the setting of the seven and nine cent price.

Trial Examiner Purcell: It goes to the fixing of the seven and nine cent price.

Mr. McBride: Note an exception, and we reserve our right of appeal at the conclusion of this hearing, and I will turn the witness over for cross-examination.

Cross-Examination by Mr. Haslett.

Q. Mr. Morgan, I believe you testified that your volume on the sale of Morton's round package salt had increased in the past several years, is that correct?

A. I did not.

Q. You didn't testify to that? Has it increased or decreased?

A. I couldn't answer that readily or accurately because I have had no occasion to check the answer on the cases purchased or sold by us.

3129 Q. Do you remember testifying as to the volume of business on Morton's round package at all, sir?

A. I did not.

Q. Do you take into consideration in fixing the price of your various commodities themselves the prices at which a competitor is selling their commodities?

A. To very mild degree.

Q. It has always been the purpose of the A. & P. Tea Company to undersell the competitors, isn't that true, sir?

A. No, I wouldn't say that is the purpose of the A. & P. Tea Company.

Q. Isn't the price which your company pays for its commodities an important factor in its business?

A. Yes, it is certainly a factor in any business.

Q. A very important factor too, isn't it, sir?

A. It is one of the many factors of merchandising.

Q. Isn't it the policy of your office to purchase commodities at the lowest possible price?

A. I think that is a fairly accepted principle of business.

Q. Do you think the business of your company would be in any way affected by the fact that some of its competitors were purchasing all of its requirements of merchandise at a ten per cent lower price than the price your company was paying for it?

Mr. McBride: Mr. Examiner, may I note my
3130 amazement in the form of an objection that counsel elects to elicit this information from a non-expert witness according to his light.

Mr. Haslett: Is that an objection?

Mr. McBride: It certainly is.

Trial Examiner Purcell: He said it was an objection.

Mr. Haslett: I have nothing to say, sir.

Trial Examiner Purcell: The objection is sustained.

By Mr. Haslett:

Q. I believe you testified that you don't know what discounts the Morton Salt Company was giving your company?

A. No. The purchases are handled by an entirely different department.

Q. And you don't know the price you paid?

A. No. Our prices are listed in our retail book, but there are some 2,000 of those so I have no knowledge at the moment of the cost of any of the items. The cost is available to me, but I don't carry them in my head.

Q. I think that is all.

Mr. McBride: I have no further questions.

Trial Examiner Purcell: The witness may be excused.

(Witness excused.)

3132 WALLACE O. HAMILTON was thereupon called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct Examination by Mr. McBride.

Q. Mr. Hamilton, will you state your name and address for the record?

A. Wallace O. Hamilton. Business address 2638 St. Louis Street.

Q. That is in New Orleans?

A. New Orleans.

Q. What is your occupation?

A. Manager of the Capitol Stores, Incorporated in charge of the New Orleans stores.

Q. How long have you been employed by the Capitol Stores?

A. Thirteen years.

Q. Did you say you were manager of the New
3133 Orleans stores, of the Capitol Stores, is that correct?

A. Yes.

Q. You refer to the stores in the New Orleans metropolitan area, is that right?

A. The city only, the metropolitan, there are some outside of the city I don't take care of.

Q. How many stores do you have in the New Orleans area under your jurisdiction?

A. Thirteen at the present time.
Q. Are they all the same kind of stores?
A. Sir?
Q. Are they all the same type of stores?
A. No sir.
Q. Describe what types you do have?
A. I have twelve small self-serving stores and one super market.
Q. With respect to the super market, that is a larger store than your self-service stores, is that right?
A. Yes sir.
Q. How long have you been the manager of the New Orleans stores?
A. Eight years.
Q. And the other five years was spent in the employ of the Capitol Stores in New Orleans?
A. In Baton Rouge and southwestern Louisiana.
3134 Q. As manager of the New Orleans stores will you describe what your duties are?
A. In charge of the personnel, of the buying, sales manager, and general supervision.
Q. Do you buy all of the products that are handled in the New Orleans stores?
A. No. I would say seventy-five per cent.
Q. Included in that seventy-five per cent do you buy the salt items handled in your New Orleans stores?
A. Yes, we buy the salt here.
Q. As sales manager do you have anything to do with fixing the retail prices that are used in your New Orleans stores?
A. I do.
Q. Do you fix all of them?
A. Yes sir.
Q. That would include any salt items that are handled, is that correct?
A. Every item in our stores is priced by me.
Q. Do you know, and do you have any particular procedure or factors you observe in the process of fixing the retail prices?
A. Well, it is based mostly on the type of store that I am pricing it for.
Q. Do you take into consideration the overhead cost?
A. I do.
3135 Q. Do you take into consideration the cost of delivering the products to the stores?

A. Yes sir.

Q. Do you take into consideration your cost price?

A. Yes.

Q. And any and all other factors that enter into merchandising are considered by you in setting the retail price, is that correct?

A. That is correct.

Q. Will you describe, Mr. Hamilton, what salt items are handled by your stores in New Orleans, referring first to the small self-service stores?

A. I didn't get that question.

Trial Examiner Purcell: Read the question.

(The reporter read the question.)

A. We handle five different brands of salt. We handle salt from Jefferson Island, Sterling, Myles, Moonrose and Morton.

Q. And those are being currently handled and stocked in your small stores?

A. In all of my stores.

Q. Including the super stores, is that correct?

A. Yes.

Q. What is the price on Morton blue package in your small stores, Mr. Hamilton?

3136 A. I get eight cents.

Q. How long has that price been in effect, if you recall?

A. Oh, at least two years, about that long.

Q. What is your price in your super store?

A. Seven cents.

Q. How long has that been in effect?

A. Since we have been operating; that is since April.

Q. Do you know what the prices are, if you recall, on the other salt items you described, the retail prices?

A. Moonrose, one and one-half pound, the small stores, three for a dime, and the large super store is two for a nickel. The Jefferson Island salt, five cents. Sterling Salt, six cents. Myles, or Jefferson Island in the one and one-half pound packages, is three for ten cents in the small stores and two for a nickel in the super market.

Q. As part of your duties, Mr. Hamilton, do you have occasion to examine the various stores yourself with respect to the character of merchandise, and the manner of displaying the merchandise?

A. Yes sir.

Q. That would be true with respect to the salt items as well as the other commodities?

A. That is correct.

Q. With respect to the salt items, Mr. Hamilton, are those various types and grades and priced salt packages that you have described scattered around the store at different intervals, or are they grouped together at one section of the store?

3137

A. They are all grouped together.

Q. So the entire line and sizes and quantities and prices are all exposed in one group section in each store, is that correct?

A. That is correct.

Q. And that would be true of the super market as well?

A. Yes.

Q. Is that typical of all merchandise in all of the stores—

A. It is.

Q. —with respect to all of the various items of the same commodity?

A. Yes, all items.

Q. How many items are handled by your small stores as to all sizes and brands, including salt items, as nearly as you can estimate?

A. I would say about 2,500.

Q. Would there be more than that handled in your super store?

A. I would say about a thousand more.

Q. 3,500 all told in your super store. Do you know, or can you estimate approximately what percentage of the gross dollar volume of your small stores is accounted for by the gross dollar volume of your salt sales of all types and brands, if you can estimate it?

3138

A. It would be purely an estimate. I imagine it would be about one-half of one per cent.

Q. That is based on your experience—

A. Yes.

Q. —of handling the sales records of the Capitol Stores here in New Orleans?

A. That is right. It wouldn't exceed that.

Q. I think you said you acted as buyer for the New Orleans stores for all of your salt items, is that correct?

A. That is correct.

Q. Do you know what price is paid, the invoice price is of Morton's blue package to the Capitol Stores?

A. A dollar and fifty cents.
Q. That is per case?
A. Per case.
Q. Do you receive any price adjustment or rebate of any kind from the Morton Salt Company with respect to the blue package?
A. Nothing from the Morton Salt Company, no sir.
Q. Do you receive it from any other source?
A. Yes sir.
Q. Will you state how much it is and from where you receive it?
3139 A. I get that from the Consolidated Companies. It is seven and one-half cents per case.
Q. When you price your Morton blue package salt you base your retail price on the dollar and a half invoice price, or do you base it on the dollar forty-two and a half cents?
A. The dollar and fifty cents.
Q. Then, the seven and one-half cents, so far as your stores is concerned, is not reflected in the resale price?
A. No sir.
Q. How is the seven and one-half cents handled by your stores that you say you get from the Consolidated Companies?
A. It is just used as a warehouse credit.
Q. It is handled as a miscellaneous item?
A. Miscellaneous item.
Q. That comes in at irregular intervals from the Consolidated Companies?
A. Not at regular intervals. I never keep close tab of it. Every two or three months, I would say.
Q. But it has no factor in your retail price?
A. No sir.
Q. I think you may cross-examine.

3140 *Cross-Examination by Mr. Haslett.*

Q. Mr. Hamilton, I believe you stated that you purchased approximately seventy-five per cent of the requirements of your company?
A. Right.
Q. Who purchases the other twenty-five per cent?
A. It is through our main office, in Baton Rouge.
Q. Your main office is in Baton Rouge?

A. Yes, sir.

Q. Is that connected with the Consolidated Company's main office?

A. No, sir.

Q. A separate organization?

A. A separate organization.

Q. You stated that you, in fixing your retail prices, based it on various factors, the cost of the product, and various overhead expenses, and so on. Does competition enter into the picture of fixing retail prices?

A. Not so much.

Q. Does it enter into it?

A. I never did bother much about that.

Q. You are not interested in what the competitor sells his product at?

A. I am interested, but it don't enter into it when
3141 I set my prices.

Q. It doesn't have any effect on you at all?

A. No.

Q. Is that correct?

A. That is correct.

Q. Is Sterling Salt a product manufactured or processed by the International Salt Company?

A. Yes, sir.

Q. I believe you stated that your company gets a seven and a half cents per case allowance from the Morton Salt Company. What is that for, sir?

A. I didn't say Morton Salt Company. We get that from the Consolidated Company.

Q. What do you get it for?

A. What do I get it for?

Q. Yes.

A. It is a rebate. They give me seven and a half. That is all I know.

Q. It is not based on any quantity purchases that you know of, sir?

A. No, sir. I don't keep that. I don't have no way of checking—that is, I don't keep any record of the number of cases that I receive.

Q. I see, sir. Do you know whether the Capitol Stores, Incorporated, of which you are sales manager, and
3142 general manager, I believe, purchased five thousand packages of Morton's round package Blue Package Salt in any one year, or not?

A. I couldn't answer that right off.
Q. You don't know that?
A. I don't know that.
Q. What do you do with the rebate when you get it, sir?
A. I send the credit memorandum to the main office.
Q. I see, and does it show up on your books here in New Orleans?
A. No.
Q. It doesn't?
A. No. You see, we don't keep—the records are not kept here.
Q. Then you don't know what becomes of the rebate you get from the Morton Salt Company?
A. Well, I get credit for it in the warehouse, and take it for granted my office gives me warehouse credit for it. I put it in on my report.
Q. As operating expense?
A. No, credit.
Q. Credit against your operating expense?
A. Against my stock.
Q. Oh, I see, sir. Do you know when the price of eight cents was agreed upon, or when the price of eight cents
3143 was fixed by you for the round package salt in the twelve regular stores here in New Orleans?
A. Off hand, no, sir.
Q. Has it been a long time?
A. Yes, sir, it has.
Q. How about the price of seven cents for your super market?
A. I put that in in April.
Q. Of this year, sir?
A. Yes, sir.
Q. And what factors did you take into consideration in arriving at that figure?
A. Well, just the cost of operation, and a cheaper cost of operation.
Q. Did you put that figure into effect immediately upon the opening of the store?
A. Yes. I would say yes, when I opened my store, I opened at that price.
Q. How did you know your operating costs, your costs of operation in that store, would be less than in the others?
A. Well, from other stores we operate, we know about our costs, and naturally we had established what we expected the sales to be.

Q. The fact that it was the same price at A. & P. and other super markets here had no bearing upon it?

A. I wouldn't know what my competitor has on that salt.

3144 Mr. Haslett: I see. I think that is all, sir.

Mr. McBride: I have no further questions, Mr. Examiner.

The Witness: That is all?

Mr. McBride: Yes.

Mr. Haslett: Thank you very much, sir.

3145 Room 521, United States Post Office and Federal Building,
Jacksonville, Florida,
Monday, November 2, 1942.

Met, pursuant to agreement and notice, at 10:00 a. m.

Before:

James A. Purcell, Trial Examiner.

Appearances:

John T. Haslett, Esq., Attorney for the Federal Trade Commission.

L. M. McBride, Esq., 310 South Michigan Avenue, Chicago, Illinois, attorney for respondent.

3146 Mr. McBride: Mr. Examiner, I call as my first
3147 witness this morning, on behalf of the respondent, Mr. A. D. Davis.

A. D. DAVIS, was thereupon called as a witness for the respondent, and, having been first duly sworn, testified as follows:

Direct Examination by Mr. McBride.

Q. Mr. Davis, will you state your name and address for the record, please.

A. A. D. Davis. My home address?

Q. Your home address?

A. 2108 River Road, Jacksonville, Florida.

Q. What is your occupation, Mr. Davis?

A. Merchant.
Q. And with what company are you connected?
A. Winn & Lovett Grocery Company.
Q. What is your position with that company?
A. President.
Q. How long have you been president?
A. Three years.
Q. And were you connected with the company prior to that date?
A. No.

Q. At all times since you have been connected with
3148 the Company, you have been president of the Winn & Lovett Grocery Company?
A. Yes, sir.
Q. Is that correct?
A. Yes, sir.
Q. Where is the principal office of that company located?
A. Corner of Beaver and Barnett Streets, Jacksonville, Florida.
Q. Can you state, Mr. Davis, who the directors of the Winn & Lovett Grocery Company are?
A. The directors are W. R. Lovett, S. R. Marks, A. D. Davis, J. E. Davis, Francis Childress, F. W. Davis, and M. A. Davis.
Q. The Winn & Lovett Grocery Company is incorporated, I take it?
A. Yes.
Q. Incorporated under the laws of the State of Florida?
A. Yes, sir.
Q. Who are the officers of the Winn & Lovett Grocery Company, Mr. Davis?
A. A. D. Davis, president; H. L. Avery, vice-president, Ernest W. Kavanaugh, Secretary and Treasurer.
Q. Can you name the principal stockholders of the Winn & Lovett Grocery Company? By principal stockholders, I mean the ones who have the controlling interest in that company?

A. A. D. Davis, J. E. Davis, M. A. Davis, and F. W.
3149 Davis.

Q. You are familiar with the stockholdings so that you can state that of your own knowledge; is that correct?
A. Yes, sir.
Q. Do you have any familiarity or knowledge with respect to the Economy Wholesale Grocery Company?

A. Yes, sir, I do.
Q. Is that a corporation?
A. Yes, sir.
Q. Incorporated under the laws of the State of Florida?
A. Yes, sir.
Q. Who are the directors of that company, if you know, Mr. Davis?
A. I think the directors are A. D. Davis, J. E. Davis, Ethel Davis, F. W. Davis, and M. A. Davis.
Q. You are a director of that company yourself?
A. Yes, sir.
Q. Do you hold any other official capacity with that company?
A. No, sir.
Q. Do you know, Mr. Davis, who the principal stockholders of that company are, again having reference to the stockholders who hold the controlling interest?
A. Well, the principal stockholders are the same four who have a controlling interest in the Winn & Lovett
3150 Grocery Company; the same four individuals.
Q. And you know that of your own knowledge?
A. Yes, sir.
Q. Is that correct?
A. Yes, sir.
Q. Do you know, or do you have any knowledge with respect to the Table Top Stores?
A. The Table Supply Stores.
Q. The Table Supply Stores?
A. Yes, sir. Yes, I know something about the ownership of those stores.
Q. Do you know what the corporate set-up of those stores is, Mr. Davis?
A. Those stores are retail food stores, and they are owned by five different corporations, who are strictly in the retail business.
Q. Can you designate the names of those five corporations?
A. C. G. Whittaker, Incorporated, J. Ellsworth Davis, Incorporated, Ethel Davis, Incorporated, Tine W. Davis, Incorporated, and M. Austin Davis, Incorporated.
Q. In other words, the corporate name of each of those five corporations is in terms of the name of an individual; is that correct?
A. That is correct.

Q. And are those respective individuals the prin-
3151 cipal or controlling stockholders of the responsive corporations, if you know?

A. That is correct.

Q. The Winn & Lovett Grocery Company is what—a wholesale or retail company?

A. Retail.

Q. Entirely retail, is that correct?

A. That is correct.

Q. What is the nature of the operation of the Economy Wholesale Grocery Company?

A. The Economy Wholeasle Grocery Company is in the wholesale business only; a cash and carry wholesale business throughout, with several branches over the state, and it wholesales groceries also to the five corporations who operate the Table Supply Stores.

Q. And the Table Supply Stores, I believe you testified, are all retail outlets; is that correct?

A. That is correct.

Q. Do the Winn & Lovett Grocery Company and the Economy Wholesale Grocery Company occupy the same quarters, or any similar quarters in Jacksonville?

A. We rent space to them in Jacksonville in our warehouse on a month to month basis, in which they operate their Jacksonville branch.

Q. That is, in the same building here in Jacksonville?

3152 A. Yes, sir.

Q. At the address which you gave as the principal office of the Winn & Lovett Grocery Company?

A. Yes, sir; that is partitioned off from our warehouse.

Q. Does that arrangement obtain with respect to any other points in Florida where the Winn & Lovett Grocery Company and the Economy Wholesale Grocery Company operate?

A. No, sir.

Q. Does the Winn & Lovett Grocery Company supply any commodities to the Economy Wholesale Grocery Company, Mr. Davis?

A. Yes, we sell some commodities to them.

Q. You have identified a number of individuals, including yourself, by the last name of Davis; I think four, all told; is that correct?

A. Five, I believe, including Ethel Davis.

Q. What is their relationship, if you know, Mr. Davis?

A. Ethel Davis is the mother of four brothers.

Q. And the other four Davises, then, including yourself, are all brothers?

A. That is correct.

Q. Has that arrangement obtained since you have been president of the Winn & Lovett Grocery Company; the description which you have given of the Winn & Lovett Grocery Company, the Economy Wholesale Grocery Company and the Table Supply Stores?

3153 A. Has that been obtained since I was president?

Q. Has that same arrangement been in existence since you became president of the Winn & Lovett Grocery Company?

A. Yes, sir.

Mr. McBride: I think you may cross-examine.

Mr. Haslett: No questions.

Trial Examiner Purcell: You are excused. Thank you very much, Mr. Davis.

(Witness excused.)

Mr. Haslett: Mr. Examiner, at the close of the hearing in Chicago, I made a motion to strike Respondent's Exhibits 17 to 27, inclusive, from the record, which motion was favorably passed upon by the Examiner, and the documents known as Respondent's Exhibits 17 to 27 were stricken from the record, and all testimony in connection therewith. Mr. McBride called to our attention at that time that the Respondent's Exhibit 17 was not a cost exhibit, but was put in as a non-injury to competition exhibit. I did not have the record at that time to check the statement—not, of course, doubting Mr. McBride's statement—but since that time I have checked the record and find that Respondent's Exhibit 17 is not a cost exhibit, and was offered by Mr. McBride as a so-called non-injury to competition exhibit, as shown on page 2535 of the record. I, therefore, Mr. Examiner, wish to amend
3154 my motion, if possible, at this stage of the proceeding to exclude Respondent's Exhibit No. 17 from that motion, and to include in the motion Respondent's Exhibits 18 to 28, inclusive, thereby leaving in the record Respondent's Exhibit No. 17, and all testimony in connection therewith.

Mr. McBride: Do I understand, Mr. Haslett, that when you say you exclude Exhibit 17 from your motion that you also mean to exclude from the motion all oral testimony pertaining to Respondent's Exhibit No. 17?

Mr. Haslett: I think that is just what I said.

Trial Examiner Purcell: Will you read the record, Mr. Reporter?

. . . The record was read as requested.

Trial Examiner Purcell: It stands in evidence. Do you have any comment, Mr. McBride?

Mr. McBride: No, I don't know that I have any comment at all.

Trial Examiner Purcell: In the light of the statement of counsel for the Commission, Respondent's Exhibit No. 17, and all oral testimony in support thereof will stand in evidence. This ruling stands as amendatory of the ruling of the Examiner to exclude referred to in the foregoing statement of counsel for the Commission, as appearing on pages 2981, et seq. of the record.

I will declare a recess at this time, awaiting the 3155 next witness.

(There was a short recess.)

Trial Examiner Purcell: Proceed.

Mr. McBride: Mr. Examiner, I call as the next witness on behalf of the respondent, Mr. L. H. Blitch.

L. H. BLITCH, was thereupon called as a witness for the Respondent, and having been first duly sworn, testified as follows:

Direct Examination by Mr. McBride.

Q. Will you state your name and address for the record, please?

A. L. H. Blitch: My home address?

Q. Yes.

A. 4650 Apache Avenue, Jacksonville.

Q. What is your occupation, Mr. Blitch?

A. Purchasing agent, Winn & Lovett Grocery Company.

Q. Are you the same Mr. L. H. Blitch that testified some months ago in this proceeding as a witness on behalf of the Commission?

A. Yes, sir.

Q. How long have you been connected with Winn & Lovett Grocery Company, Mr. Blitch?

A. Five years in this position.

Q. As purchasing agent?

3156 A. As purchasing agent.

Q. And were you connected with the company prior to that time?

A. Yes, I was with the company from 1927 to 1932. I resigned at that time, and was away for four years, and came back with them to take this position.

Q. During this first period, what was your position?

A. I handled the city shipping.

Q. In Jacksonville?

A. In Jacksonville.

Q. What was your occupation prior to that time?

A. I was assistant buyer, and in charge of the shipping department of the Blitch Grocery Company.

Q. That was your own company?

A. My father's concern, which was taken over.

Q. How many years were you in that position?

A. Four years.

Q. Four years?

A. Yes, sir.

Q. As purchasing agent for the Winn & Lovett Grocery Company, will you describe your duties for the record, please?

A. Well, my office handles the purchasing of all groceries, some supplies, and fixes the prices for these commodities; fixes the prices in that office.

3157 Q. The Winn & Lovett Grocery Company operates retail stores, is that correct?

A. Yes, sir.

Q. And do you fix the prices for all stores run by the Winn & Lovett Grocery Company?

A. Yes, sir.

Q. And your purchases are of all commodities for all of those stores?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. Included in those commodities, do you have any salt items that you purchase?

A. Yes, sir.

Q. Will you state what those salt items are; describe the ones that you carry?

A. Well, we carry flats in the one and one-half pound package, at the present time, under the Miles brand. We carry Miles hexagon package; we carry Sterling salt—

Q. Squares or rounds?

A. It is a square package, similar to the hexagon package; it isn't a standard flat package.

Q. All right.

A. We also sell Morton salt in the round can. We sell one other line. I neglected to mention the Panel-Pack.

3158 I think that covers our salt.

Q. The Morton salt in the round can is the blue package, free running and iodized salt, is that correct?

A. Yes, sir.

Q. How many stores does the Winn & Lovett Grocery Company operate?

A. Seventy-nine.

Q. And through what territory, if you can bound it, roughly, geographically?

A. We cover the southern part of Georgia, going as far west in Florida as Marianna, and as far south as Hollywood.

Q. Do you maintain stores in Tallahassee, Florida?

A. Yes, sir.

Q. Do you maintain stores in Jacksonville, Florida?

A. Yes, sir.

Q. How many stores do you have in Jacksonville?

A. Well, including our Jacksonville Beach stores, which are included in that group, I believe thirteen.

Q. And how many in Tallahassee?

A. Two.

Q. Two?

A. Yes, sir.

Q. Are all of the stores that your company operates of the same type?

A. Of the same general type. They are different

3159 as to volume and as to sizes of stores.

Q. Well, with respect to that difference in volume and size, do you classify them in any particular way, or by any particular nomenclature?

A. Yes, we classify them by pricing zones.

Trial Examiner Purcell: By what?

A. By pricing zones. We have what we call our regular state zone, which is the small type store, our special state stores and our super-price zone.

Q. And, then, would the volume and size of the regular stores, for example, be the smallest, and of the special stores larger, and of the super-stores still larger; is that a proper distinction?

A. Yes, loosely that is the way we classify them.

Q. Will you describe what class, of the three that you have described here, the stores in Jacksonville fall in?

A. We class all those as super-stores.

Q. You class all those as super-stores?

A. Yes, sir.

Q. And what class would the stores in Tallahassee fall in?

A. Tallahassee is in the special zone.

Q. That would be the medium sized stores?

A. Yes, sir.

Q. Medium volume stores?

A. Yes, sir.

3160 Q. I believe you testified that you set the prices on all commodities handled by the Winn & Lovett Grocery Company, including all salt items?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. With respect to the stores here in Jacksonville, can you state what the price of the Morton blue package is?

A. Seven and one-half cents per package.

Q. How long has that price been in effect; if you recall, Mr. Blitch?

A. The best that I can recall, several years.

Q. Do you know the prices of the other types of salt packages in Jacksonville, which you described?

A. I think I can remember them. The flat package is two for a nickel; two and one-half cents per package. The Hexagon and Sterling and Panel-Pack are four and one-half cents in this territory.

Q. Is the highest priced salt item that you carry the blue package?

A. That is correct.

Q. Referring to prices, to retail prices?

A. Yes, sir.

Q. Now, with respect to the Tallahassee stores, what is the retail price of Morton's blue package in those

3161 stores?

A. Eight cents.

Q. Do you remember what the prices in those stores are of the other salt items you have referred to?

A. I believe the prices are—on the Panel-Pack, Sterling and Hexagon, are five cents, and I am not positive whether

the flats are two and one-half cents or three and a third cents. I am posifive that the three and one-third cent price is in effect in the regular zone, but in the special, I am not sure.

Q. But, in any event, even in the special stores, the retail price of the Morton blue package would still be higher than any other salt item that you carry?

A. That is correct.

Q. What is the price of Morton's blue package in the regular or small stores, to which you have referred?

A. Eight and one-half cents.

Q. Eight and one-half cents?

A. Yes, sir.

Q. Would it be true, also, in that type of stores, also, that the retail price of the Morton blue package is a higher price than any other salt items that you retail?

A. Yes, sir.

Q. Can you estimate, Mr. Blitch, approximately, the number of commodities that are handled in your stores
3162 here—strike that, please. Can you estimate Mr. Blitch, the total number of commodities, including all of the salt items that you have described, which would be handled, on the average, by one of your stores here in Jacksonville?

Mr. Haslett: May I have my same objection, Mr. Examiner?

Trial Examiner Purcell: The objection is overruled.

Q. (By Mr. McBride.) Referring now, Mr. Blitch, to, shall we say, normal times, and not discounting by reason of any stringencies due to the war situation?

A. Well, roughly, between fifteen hundred and two thousand items, on all stock.

Q. That would be true of all of your super-stores?

A. That is right.

Q. And would the number of items handled be somewhat smaller in the special stores?

A. No; in the special stores it would be approximately the same as in the super-zone.

Q. And, then, what would be the relationship of the total number of commodities in the small or regular stores?

A. It would be somewhat less. Some items we do not carry. However, only a hundred or so difference.

Q. I see.

3163 A. Yes, sir.

Q. Then the total number of salt items in terms of percentage to the total number of commodities handled in your stores, would be something less than one per cent of the total; is that correct?

A. Yes, sir.

Q. Can you state, Mr. Blitch, approximately the percentage of the total gross value of one of your super-stores that would be accounted for by the gross volume of all of your salt items?

A. That is pretty hard to do. It would be very small. I shouldn't think, and just without checking into it thoroughly, it would be over two or three per cent at the outside.

Q. Two or three per cent at the outside?

A. Yes, sir.

Q. It could be smaller or might possibly—you say that would be the outside?

A. Yes, I should think so, offhand. I can't tell exactly without checking our figures.

Q. In setting the prices on commodities, Mr. Blitch, and I refer now to all commodities in your general pricing scheme, can you describe what factors enter into the setting of retail prices in your operations?

3164 A. Well, several factors enter into it. Of course, we have a general idea of what each commodity should carry as a gross percentage of mark-up, the list price, and, to a certain extent, competition.

Q. Would your overhead have anything to do in connection with setting prices?

A. Well, of course, that is taken into our general idea as to what each commodity group should carry.

Q. I see. Does the Winn & Lovett Grocery Company maintain warehouses for serving its various stores?

A. Yes, sir.

Q. And, does the Winn & Lovett Grocery distribute with its own trucks, or by some other means, the commodities from those warehouses to the various stores?

A. We handle it by several means now. We have our own trucks. We also ship by car.

Trial Examiner Purcell: And what?

A. And also ship by freight cars, and use, also, boats down the St. John River.

Q. (By Mr. McBride.) Then, with respect to the dis-

tribution, that is added to the cost of the Winn & Lovett Grocery Company, is that correct, in making those distributions?

A. Yes, sir.

Q. And the maintenance and operation of those warehouses are another cost of the Winn & Lovett Grocery Company?

3165 A. Yes, sir.

Q. And any handling that is required in connection with the warehouses and distribution becomes a cost of the Winn & Lovett Grocery Company?

A. That is correct.

Q. In connection with the overhead, do you take into consideration, in your general overhead, the labor hire, the rent, lighting and other cost requirements of your various stores in fixing prices?

A. Only in the general picture. As I stated, those figures do not come directly to me, but we have to consider those factors in setting our prices for our three state pricing zones.

Q. Does the volume of the various types of stores have anything to do with fixing your prices?

A. Very much, yes.

Q. To what extent, or in what degree, if you can describe it?

A. Well, our prices in the super-zone can necessarily be lower because of the higher volume in that type of store, which makes, on a percentage basis, our overhead figures less.

Q. Is that the principal reason for the differentiation in prices between the super-stores and special stores and the regular stores?

3166 A. Yes, I would say that is probably the chief factor.

Q. That would be true with respect not only to Morton's blue package, but to all packages?

A. Yes, sir.

Mr. Haslett: Mr. Examiner, I have been sitting here listening to this testimony based upon estimates and guesses, figures that he doesn't know anything about; they haven't come to him, and he is giving testimony in regard to them. I think in the protection of my record, I want to make a motion to strike the last question and answer of this witness based upon conclusions, the details of which have

not been made available, nor have the qualifications of this witness been brought out as to the competency of this testimony.

Mr. McBride: Mr. Examiner, I think that counsel's motion is not based on any legal or factual propriety. This witness has testified that he fixes the prices of all commodities, including all salt commodities, and including the blue package in particular, in all three types of stores, and he has described the type of stores, and he has discussed those types of stores, primarily as to the size of the store and the volume of the store.

Trial Examiner Purcell: Well, gentlemen, let us not get into an involved argument on the record again, and run up as many pages as we have in the past. It is
3167 easier for me to overrule the motion and let the testimony stand in all of its supposed weaknesses, as brought out by the attorney for the Commission. The motion is overruled.

Q. (By Mr. McBride:) Mr. Blitch, do you know what the invoice price is of Morton blue package salt?

A. $1.50.

Q. $1.50.

A. Yes, sir.

Q. That has been the invoice price for some time, has it not?

A. Yes, sir.

Q. What, if any, quantity discount does the Winn & Lovett Grocery Company receive from the Morton Salt Company on the blue package salt?

A. Ten cents per case.

Q. And that has been in effect for several years, has it not?

A. Yes, sir.

Q. In pricing Morton's blue package salt, do you take into consideration, as your cost basis for setting the retail price, the $1.50 invoice price?

A. Yes, sir.

Q. What is the net price after the quantity discount of ten cents?

A. $1.50 less ten cents.

3168 Q. What happens to the quantity discount, if you know, of ten cents?

A. It is shown only as miscellaneous income, an allowance account that we have up there.

Q. It has no bearing as a factor in fixing retail prices by you in your department, is that correct?

A. No, sir.

Q. If you would use $1.40, as an assumption, Mr. Blitch, would your retail prices be any different than they are now, based on the $1.50?

A. I don't think they would. The rebate is too small.

Q. Then the same differentials would be observed with respect to the three classes of stores as to retail prices, which you now observe?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. In connection with the displays in your stores, Mr. Blitch, do you know whether or not the various salt items, that you have described, are scattered around the store or are they grouped together in one section on the floor?

Mr. Haslett: I object on the same ground as I objected to the testimony in New Orleans. It hasn't anything to do with the issues in this case of price discrimination as 3169 to where the salt is placed,—whether it is placed up on the ceiling or not.

Trial Examiner Purcell: I think I have ruled on that, Mr. Haslett? Didn't I, Mr. McBride?

Mr. McBride: In my favor, yes, sir.

Trial Examiner Purcell: If you think it is a part of your case, you may go ahead. The objection is overruled.

Mr. McBride: Will you read the question, Mr. Reporter?

(The question was read.)

A. As a normal thing, they are grouped together in one section.

Q. (By Mr. McBride.) So that all the various sizes and quantity and prices of salt items are presented in one section, or one position in the store?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. Is the rate of mark-up from the cost basis the same on all salt items, Mr. Blitch?

A. I did not get that question.

Trial Examiner Purcell: Read the question, Mr. Reporter.

(The question was read.)

A. I can only answer that it is in a general way,
3170 yes. Circumstances may alter prices on any commodities, not only salt; but, in a general way, the mark-up on any given commodity is the same.

Q. (By Mr. McBride.) Would the rate of mark-up differ between commodity classes?

A. Yes, sir.

Q. So that the rate of mark-up on all other commodities would not necessarily be the same as on your salt items?

A. No, sir.

Q. Is that correct?

A. That is correct.

Q. Mr. Blitch, do you know whether or not special displays of Morton blue package salt have ever been employed in any of your stores?

A. Yes, sir, they have.

Q. What was the object of such displays?

A. Increased volume.

Q. Have you ever had occasion to study, or have you studied in your stores the effect of such special displays of any commodities?

A. Yes, sir.

Q. What was the result of that survey?

Mr. Haslett: I object, unless it is confined to salt.

Mr. McBride: Mr. Examiner, I would like to
3171 make a brief statement. I propose to ask this witness a question or questions regarding salt, and in particular about the blue can, with respect to displays. I simply wish to qualify him.

Trial Examiner Purcell: All right, if it is your purpose to qualify him.

Mr. McBride: The questions are on qualification, if the Examiner please.

Trial Examiner Purcell: Read the question, Mr. Reporter.

(The question was read).

A. Some of these displays result in increased volume.

Q. (By Mr. McBride.) And the reports of that survey came through your supervisors?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. In your opinion, then, Mr. Blitch, if Morton's blue package sale were placed for, say, a month in a special

display, at what you would designate as a special display spot, and thereafter returned to its regular section in the salt section of your stores, would the volume of sales of Morton's blue package salt be greater the first month than the second month?

Mr. Haslett: I object to that. Mr. Examiner,
3172 we went into this very thoroughly in New Orleans, and my objection was sustained. We have gone into the question of the economics of merchandising. Now, I have also an additional objection as to the way the questions are being framed. They are leading. I don't mind the trial attorney asking a number of leading questions. I probably resort to them myself, but where words are put into the mouth of the witness by leading questions, I think the objection should be made to those. In regard to the economics of merchandising, this proceeding has only reference to price discrimination and price competition. We are dealing solely with selling to competing customers at different prices, and the result being that competition has been injured as a result of the lower prices to some and not to others. I think that is the issue in this case. We have gone far beyond the confines or borders of the complaint in this proceeding. We have gone over all this before, and I think counsel is taking advantage of a situation that doesn't exist, by restating questions of this type.

Mr. McBride: Mr. Examiner—Are you through, Mr. Haslett?

Mr. Haslett: Yes.

Mr. McBride: Mr. Examiner, as to the leading nature of the question, I don't think it is leading. If it is, that can be readily corrected, but I will still return to
3173 the same point for which this question was framed. We have been over this; under somewhat different circumstances, or under the same circumstances, it is immaterial to me. But counsel for the Commission, in presenting the case on behalf of the Commission, has spent a very substantial amount of time and effort in attempting to elicit from witnesses the fact that a disparity in resale prices, retail prices of retailers or resale prices of wholesalers, and that that in and of itself would result in some sort of vague injury to competition. As I stated previously, and as I state again, this sort of evidence is being tendered in general and by this particular witness for the

purpose of establishing thoroughly on the record that it is not enough to give only one factor alone, namely the retail price or the resale price, as the case may be, and I am entitled to rebut any implications or inferences that might be available from that type of questions on Mr. Haslett's part in presenting his case, and it can only be rebutted by showing the factors that do come into play.

Trial Examiner Purcell: Off the record.

(Discussion off the record.)

Trial Examiner Purcell: We will take a five minute recess.

(A short recess was taken.)

Trial Examiner Purcell: Gentlemen, during the
3174 interim, I have had occasion to review the record in this case, particularly with regard to the testimony of the witness Ryall S. Morgan, where practically the same questions were asked, exceptions noted and reasons and arguments stated by counsel; at the conclusion of all of which, on page 3103 of the record, and in order that the position of the Trial Examiner may be again understood, I quote the record, in which I said:

"Nevertheless, I am not prepared to differ with counsel for the respondent at this time as to what he conceives to be a true defense, and in justice to him I am going to let him put it on. If, as you say, Mr. Haslett, it has no place in this case, when the record cannot possibly be distorted by it, because it may all be disregarded. Nevertheless, I think it would be very dangerous for me at this time, at this late time, to preclude the respondent."

That was my decision then and I stand by it at this time, with the understanding, of course, that, as the record will disclose, Mr. Haslett has a continuing reservation of a motion to strike all this testimony.

You may proceed?

Mr. McBride: Will the reporter read the last question, please?

(The question was read.)

A. It would be greater the first month while it
3175 was on display.

Q. (By Mr. McBride.) I believe you stated, Mr. Blitch, that there had been a number of displays in your various stores of Morton's blue package salt in the past?

A. Yes, sir.

Q. Is the Winn & Lovett Grocery Company continuing

the policy of having such special displays on Morton's blue package salt?

A. We have occasional displays, yes, sir.

Q. Is there any intention on the part of the Winn & Lovett Grocery Company to abandon the use of those special displays from time to time?

A. No, sir.

Q. And your purpose in continuing, and intending to continue those special displays, is what, Mr. Blitch?

A. The increased volume we receive from them.

Q. Mr. Blitch, do you have anything to do with the advertising of the commodities sold by the Winn & Lovett Grocery Company?

A. Yes, sir.

Q. What duties do you perform in that connection?

A. I select the items for advertisement in our first rough draft of an ad, and at a later time they will be discussed in general in a sales meeting of our sales and merchandising departments.

3176 Q. What is the purpose of advertising the products of the Winn & Lovett Grocery Company?

A. Increased volume of our business.

Q. Not only of the commodities advertised but of all commodities in the store; is that correct?

A. Yes, sir.

Q. That is correct?

A. Yes, sir.

Q. Have salt items ever been advertised by your company, Mr. Blitch?

A. Yes, sir.

Q. Has Morton's blue package salt ever been advertised by your company?

A. Yes, sir.

Q. And was the purpose of advertising those salt items and particularly the blue package items the same as you have stated generally for your advertising program?

A. Yes, sir.

Q. In your opinion, was the volume of Morton's blue package salt sales increased as a result of that advertising, Mr. Blitch?

A. Yes, sir.

Q. Do you have access to reports with respect to the volume done by your various stores under your jurisdiction?

3177 A. Yes, sir.

Q. How often do those reports reach your desk, Mr. Blitch?

A. Weekly.

Q. And you study the reports as they come in?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. Does the volume of all of your stores on all of your commodities,—is that volume precisely the same?

A. I don't quite understand your question.

Q. You have, I believe, testified you have about seventy-six stores?

A. Seventy-nine.

Q. Seventy-nine?

A. Yes, sir.

Q. Is the weekly volume of each of those seventy-nine stores the same as every other store?

A. No, sir.

Q. Is the weekly volume of sales of Morton's blue package salt in each of those seventy-nine stores the same?

A. No, sir.

Q. It would vary according to the store?

A. Yes, sir.

Q. Is that correct?

A. That is correct.

3178 Q. What would account for the variance in volume as to Morton's blue package salt?

A. I would say the chief thing would be store traffic; the amount of store traffic.

Q. And would the display end of it, which you have testified to, have anything to do with it?

A. Yes, sir.

Q. To what degree, if at all, would the managerial ability of the staffs of your various stores have to do with the variance in volume?

A. Well, the ability of our managers would affect it, of course. Whether or not a manager is liked or not liked has a definite bearing on the volume of the store. I might add, particularly in the smaller stores.

Q. That is where it would have the greater impact?

A. Yes, sir.

Q. The managerial ability?

A. Yes, sir.

Q. Mr. Blitch, taking one of your special stores, at which, I believe, you stated the price of Morton's blue package salt was eight cents?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. If that special store, we will say, in Tallahasee,
3179 in the Tallahassee territory, where you have such special stores, is offering Morton's blue package salt at eight cents, while a competitor was offering that same blue package at seven and one-half cents per package, would it follow from that fact alone that the business of the Winn & Lovett Grocery Company on the blue package in that store would thereby be injured?

A. On that one item alone, I would say that there would not be a lot of difference, on the one-half cent difference.

Q. Would there necessarily be any difference if the price differential were one cent? In other words, if a competitor were selling at seven cents, whereas your store was selling at eight cents, would it necessarily follow, without knowing the other factors, that your store would be injured as a result of that disparity in retail prices?

A. If I understand the question—

Trial Examiner Purcell: Read the question, Mr. Reporter.

(The question was read.)

A. I can't say whether our store would be injured or not, without knowing the other factors.

Q. (By Mr. McBride.) By the "other factors", what do you refer to?

A. Well, service, delivery, charge—those would be the chief factor.

3180 Q. Would display and advertising factors enter into that, Mr. Blitch?

A. Yes, they would. Display would enter into it.

Q. And if you were dealing with one of your regular stores with respect to this question, that would enter into it?

A. Yes, sir.

May I clarify the managerial ability question? Managerial ability—perhaps I may have given the wrong impression. Our managers for our super-stores have to have a great deal of ability, but by the question I answered a while ago, whether the manager is liked or disliked in a

territory, has more bearing in the small stores, as he comes into personal contact with so many of his customers.

Q. Mr. Blitch, if one of your stores in the Jacksonville metropolitan area, where I believe the price is two for fifteen cents on Morton's blue package salt—is that correct?

A. Yes, sir.

Q. If you will assume for the moment that your price in Jacksonville was two for fifteen cents, and that a competitor also sells Morton blue package salt at two for fifteen cents, would the business of the Winn & Lovett Grocery Company, on Morton's blue package salt, be in any way injured if that competitor purchased for ten cents less per case than the Winn & Lovett Grocery Company
3181 was purchasing the same thing for?

A. Assuming our volume or our particular store would be hurt—No.

Q. So long as there is a parity in retail prices, and all other factors are equal, there would be no injury; is that correct?

A. Yes, sir. There would be no injury, sir.

Q. Have you ever engaged in the business of retailing salt items only, Mr. Blitch?

A. No, sir.

Q. Have you ever heard of any retail store in this territory, where nothing but salt is retailed?

A. No, sir.

Q. Do the Winn and Lovett Grocery Company stores at all times—strike that please, Mr. Reporter. Do you know of any given time, Mr. Blitch, when the prices in the Winn & Lovett Grocery Company stores were lower than the prices of all competitors, including both salt items and other commodities?

A. No, sir.

Q. Do you know of any given period when the prices of all commodities, including salt items, of the Winn & Lovett Grocery Company stores, were higher than all other competitors?

A. No, sir.

3182 Q. Would it be true, Mr. Blitch, that at all times you may be higher on some commodities and higher on other commodities; is that correct? As to retail prices—strike that. That you might be high on some commodities and low on others, as to the commodities offered?

A. Yes, sir.

Q. Would that be true as to salt items as well as on other items?

A. That is right.

Q. Do you know what is paid by your competitors, retail competitors, for their salt items?

A. No, sir; not definitely.

Q. They could be paying more or they could be paying less?

A. Yes, sir.

Q. Would that be true on all commodities that the Winn & Lovett Grocery Company handles?

A. In almost every instance, yes, sir.

Mr. McBride: You may cross-examine.

Cross-Examination by Mr. Haslett.

Q. Mr. Blitch, do you know whether or not the Lovett, the Winn & Lovett Grocery Company has ever sold Morton's round package salt at lower prices than any one of its competitors?

A. Do I know—

3183 Trial Examiner ell: Read the question, Mr. Reporter.

(The question was read.)

A. As a general shelf price, no.

Q. (By Mr. Haslett.) Do you mean to say there is no other competitor of the Winn & Lovett Grocery Company in Jacksonville that is selling Morton's salt at a higher price than what you are charging for it?

A. Oh, yes. Perhaps I misunderstood you.

Q. Then you do sell lower than your competitors?

A. Than some of our competitors. I understood you meant any competitor.

Q. Your company gets a ten cents per case allowance from the Morton Salt Company?

A. Yes, sir.

Q. Is that desirable?

A. Yes, sir.

Q. Why do you want that ten cents a case?

A. As an added profit.

Q. What would be your testimony if one of your competitors was getting it and you weren't? Do you think you would be injured?

A. We would like to get that extra dime?

Q. You feel that it is necessary for you to have the ten cents per case allowance?

3184 A. Necessary?

Q. Yes, sir.

A. I didn't quite understand your question. It isn't necessary to the conduct of our business that we have it, but it is desirable.

Q. It is desirable?

A. Yes, sir.

Q. If one of your competitors was getting the ten cents per case allowance, and you weren't getting it, do you think your business would be injured in the salt business alone, not regarding any other type of business?

A. Our actual business would be injured only to the extent of the ten cents per case, unless our competitor had a definitely lower price at all times because of that ten cents.

Trial Examiner Purcell: Read the question, please, Mr. Reporter.

(The question was read.)

Q. (By Mr. Haslett.) But if you both had the same resale price, and he was making ten cents more on a case of salt—confining myself to the question of salt alone—do you feel the business of the Winn & Lovett Grocery Company would be adversely affected by the fact that the competitor was purchasing it at ten cents a case less?

A. It would be affected to the extent of the rebate

3185 of ten cents per case.

Q. You claimed—I believe you stated that the volume, sir, in your various stores is not the same?

A. That is correct.

Q. Per week?

A. That is correct.

Q. Why is it that the price is the same?

A. Why is it that the price is the same?

Q. Yes. You stated that the volume that you have, that you do in your various stores has a great deal to do with the prices at which your commodities are resold to the consuming public?

A. That is correct.

Q. If the volume isn't the same in the stores, why is the price the same?

A. We have to group them in a general group. We

would have no two stores doing exactly the same amount of business in any given week.

Q. You have no stores that have the same prices; is that correct?

A. Yes.

Q. You stated that your business on the blue can has been increased in some of your stores, and that this increase was due to the fact that certain merchandising functions had been performed by your company on behalf
3186 of the Morton Salt Company. Do you remember testifying to that, Mr. Blitch?

A. Yes, sir.

Trial Examiner Purcell: Will you read the question, Mr. Reporter?

(The question and answer were read.)

Mr. McBride: Mr. Examiner, I object to so much of the question that says "on behalf of the Morton Salt Company". There was no question asked or answer given on quite that basis, and I am a little concerned about the possible implication of having that added to the question. It does not appear in the record, and I object and move to strike on the ground—

Trial Examiner Purcell: Just a minute, Mr. McBride. Didn't the witness testify that from time to time the blue package has been displayed in his stores, of Morton salt?

Mr. McBride: That is correct.

Trial Examiner Purcell: Isn't Mr. Haslett predicating his question on that premise?

Mr. McBride: I am only referring now to that portion of the question that says "on behalf of the Morton Salt Company." I wish to avoid the possible inference that there is some sort of a possible peculiar advertising arrangement.

Trial Examiner Purcell: Read that question to
3187 me, please.

(The question was read.)

Trial Examiner Purcell: I think counsel's question is perfectly clear, and the witness understood it. The objection is overruled, and the motion to strike is not granted.

Q. (By Mr. Haslett.) What do you base that opinion on?

A. Actual figures of movement from our stock.

Q. Where are those figures now?

A. We have records of our movement on all items for several years past.

Q. I see. Have you those figures with you, sir?

A. No, sir.

Q. When did you last look at them?

A. I do not remember.

Q. Has it been quite a while ago?

A. Yes, sir.

Q. Before this proceeding was instituted?

A. Probably before and since.

Q. And since?

A. Yes, sir.

Q. Mr. Blitch, why do you have a price of seven and a half cents per package on the blue can salt in your supermarkets?

A. We have a lower price scale on practically every item?

Q. You have a lower price scale on practically every item?

A. Yes, sir.

3188 Q. Why is that done?

A. Because of increased volume, we are in position to have lower prices, a lower price scale and because competition, or a large part of our competition are close to those figures.

Q. Are you familiar with the prices of your competitors, Mr. Blitch?

A. Fairly generally.

Q. That is one of the important factors that enters into the fixing of the retail prices of your various commodities, is it not?

A. Yes, sir.

Q. The seven and a half a cent price is for the purpose of having people come into your store to purchase Morton's salt, isn't it?

A. Yes, sir.

Q. The same is true as to the eight and eight and one-half cents prices?

A. Yes, sir.

Q. How much money does the Morton Salt Company pay the Winn & Lovett Grocery Company for display functions or purposes?

A. None at all.

Q. Have you ever received any compensation from the Morton Salt Company?

3189 A. For that purpose, no?

Q. Have you ever received it from other companies?

Mr. McBride: I object to it, if the Examiner please, as immaterial and irrelevant as to what he receives from other companies. We have been into that before.

Mr. Haslett: I think counsel—

Mr. McBride: Just a minute. I haven't finished my statement.

Mr. Haslett: I beg your pardon.

Mr. McBride: (Continuing.) —With respect to rebates, discounts, advertising allowances on any other commodities that are not at trial or at issue in this case, but only the quantity discount given by the Morton Salt Company.

Mr. Haslett: I am wondering if counsel is serious in his statement. I am really mildly shocked to have counsel make the statement that we are interested only in the discounts of the Morton Salt Company, when he has cluttered this record up with other items that haven't anything more to do with this case than the statute of frauds. I think I am entitled, on cross-examination, to go into this. He has stated that as part of his qualifications, that he conducted various displays, various display functions for various types of commodities.

Mr. McBride: One final statement, Mr. Examiner. In counsel's view, he feels that I have gone far afield;
3190 that I have reviewed what to him are extraneous matters. I think in all conscience, with the purpose of showing and bringing into silhouette the question of the effect of the quantity discounts offered by the Morton Salt Company, and not once have I inquired as to the price—

Trial Examiner Purcell: Now, gentlemen, pardon the interruption. The objection is sustained. Let us not get too far afield.

Q. (By Mr. Haslett.) Mr. Blitch, you conduct various merchandising functions for other companies, besides the Morton Salt Company?

A. Yes, sir.

Q. They are conducted in your stores?

A. Yes, sir.

Q. Is it on the same basis which the Morton Salt Company's merchandising functions are performed?

Mr. McBride: I object to that. Again, he is getting into other products.

Trial Examiner Purcell: I think my former ruling covers this. The objection is sustained.

Q. (By Mr. Haslett.) You stated that the rate of mark-up is the same on all of your commodities; is that correct, sir?

Mr. McBride: I object to that. That is not in the record.

3191 A. No, sir.

Mr. Haslett: Will you read my question?

(Question and answer were read.)

Q. (By Mr. Haslett.) What did you state about the rate of mark-up?

A. My statement about the rate of mark-up is that we have a general idea of what each commodity class should carry; the rate of mark-up of each commodity class.

Q. Would it be the same as to all salt?

A. Approximately, yes.

Q. I see.

A. Approximately, yes, sir.

Q. You would make the same net profit on the round package salt that you would make on International salt, the Sterling product?

A. Approximately, yes.

Q. Is that correct?

A. Approximately, yes.

Q. Does the Winn & Lovett Grocery Company, through all of its outlets, sell five thousand cases of Morton's blue package salt during any twelve consecutive months' period?

A. I haven't checked recently enough to know. I think my previous testimony covered that. I do not remember what my testimony was.

Q. When you were on the stand for me, sir?

3192 A. Yes, sir. I haven't looked at our total figures since that time.

Q. What is—strike that. I believe you stated that the competition is taken into consideration in setting your prices on Morton's round package salt?

A. Yes, sir.

Q. And the price at which you pay for the salt is an important factor in your business?

A. Yes, sir.

Q. And that is also taken into consideration in setting the resale prices?

A. Yes, sir.

Q. If you were paying $1.60 a case for salt, would your resale price reflect that?

A. Well, there, again, we would have to take several factors into consideration. If our competitors had reflected it, or if our volume was such—

Trial Examiner Purcell: Just a moment. Read the question, please.

(The question was read.)

Trial Examiner Purcell: For the purpose of clarity of the record: The question is simply: Would that be reflected in your resale price?

Mr. McBride: Mr. Examiner, I object to the interruption of the witness' answer. The witness is en-
3193 deavoring to answer the question.

Trial Examiner Purcell: He may answer yes or no, and then explain.

Mr. McBride: I object again. I should like to put in this statement on this: We have encountered this difficulty before. It is obvious that counsel for the Commission is very hopeful that the witness, like some of his, did, will say that. "Why, sure, the ten cents is going to ente. into it." This witness is endeavoring to give a complete and comprehensive answer to the question.

Trial Examiner Purcell: Let counsel's statement show of record as to the Examiner's interruption. Now, the Examiner directs the witness to answer the question as put by counsel for the Commission.

Mr. McBride: May we go off the record a moment, Mr. Examiner?

Trial Examiner Purcell: You may go off the record.

(Discussion off the record.)

Trial Examiner Purcell: On the record. Read the question. Let the witness answer the question.

(The question was read.)

A. I can't answer that yes or no. May I proceed, sir?

Trial Examiner Purcell: Frame your next question.

Mr. Haslett: What was the last answer?

3194 (The answer was read.)

Q. (By Mr. Haslett.) You stated the price which you pay for your commodities is a very important factor in your business?

A. That is correct.

Q. That is correct?

A. Yes, sir.

Q. I will ask you if the Winn & Loyett Grocery Company were paying $1.60 a case for Morton's round package salt, whether or not the $1.60 price would have anything to do with the resale price of the commodity?

A. Yes, it would.

Q. I see. Then the cost would be reflected in the retail price, wouldn't it?

A. It would be considered in placing the resale price.

Q. What factors would you take into consideration, Mr. Blitch—strike that. What factors did you take into consideration, Mr. Blitch, when you put the eight and a half cent price on Morton's round package salt in your regular stores?

A. We took into consideration the fact that those stores do not have as large a volume as the other stores. That is the first. Second, that our competition in that particular area did not have a seven and a half cent or a six and a half cent or a lower price, and we were in line with 3195 competition with that price.

Q. Well, were the stores taken separately into consideration, or as a whole?

A. As a whole?

Q. As a whole?

A. Yes, sir.

Q. There wasn't any survey as to any particular store?

A. No.

Q. The same is true as to your special and super-markets?

A. No, sir, there is no special survey made.

Q. There is no special survey made?

A. That is right.

Q. Was it taken into consideration as a group?

A. As a group, of like stores.

Q. Do you know the volume of business done of the Morton blue can salt in any particular super-market?

A. No, sir.

Q. Do you know the volume of business done in any particular special store on blue can salt?

A. No, sir.

Q. Do you know the volume of business done on the blue can in any regular store?

A. No, sir.

Q. Do you know the total volume of business done in the Morton blue can salt in all stores?

3196 A. Not in exact figures, no, sir.

Q. Do you know what would be the total volume of business in the special stores?

A. No, sir.

Q. Or the regular stores?

A. No, sir.

Mr. Haslett: Now, Mr. Examiner, in accordance with my reservation in the record in New Orleans as to the testimony of Mr. Morgan, being on the economics of merchandising in the particular stores, and the testimony of this particular witness on such question, I want to make a motion to strike all testimony of Mr. Morgan and Mr. Blitch from the record, having particular reference to store displays, window displays, the economics of merchandising, the sections of stores where the commodities are situated, the placing of the cash register, and any and all testimony relative to the merchandising of Morton's round package salt.

Trial Examiner Purcell: The motion to strike is overruled. You have your exception, sir.

Mr. Haslett: May we go off the record just a moment?

Trial Examiner Purcell: Off the record, Mr. Reporter.

(Discussion off the record.)

Trial Examiner Purcell: On the record.

3197 Mr. Haslett: That concludes my cross-examination of this witness, Mr. Examiner, and I reserve my right to present the matter to the Commission at the conclusion of this proceeding.

Trial Examiner Purcell: Very well. Let the record so show.

Any redirect examination?

Mr. McBride: Yes, just a few questions.

Redirect Examination by Mr. McBride.

Q. Mr. Blitch, does your company keep any reports of deliveries out of its warehouses of Morton's blue package salt to its various stores?

A. We keep that in total. I will change that. That is kept both by total and stores, but the totals are kept indefinitely; the particular shipments to stores are not kept or filed for any length of time.

Q. But they are a part of the shipping records of deliveries to the individual stores?

A. Yes, sir.

Q. I believe you stated, Mr. Blitch, in answer to one of Mr. Haslett's questions on cross-examination that if a competitor of one of your special stores was selling Morton's blue package salt at eight cents, while your store was selling it at eight cents, and the competitor was buy-
3198 ing that package at ten cents a case cheaper, that your company would be injured to the extent of the dime?

A. Yes, sir.

Q. Will you explain what you mean by injury to the extent of the ten cents?

A. Yes. We would have no injury in that particular store. Our total operation would be, or our profit at the end of the year would be; it would show the lack of that ten cents per case which our competitor was getting.

Q. By that you mean, he might make ten cents more profit, but your profit necessarily wouldn't be cut down as a result of it?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Mr. McBride: I have no further questions.

Mr. Haslett: No further questions.

Trial Examiner Purcell: You are excused.

(Witness excused.)

Trial Examiner Purcell: Off the record.

(Discussion off the record.)

Mr. McBride: I will call as the next witness on behalf of the respondent, Mr. W. H. Petit.

W. H. PETIT, was thereupon called as a witness for the Respondent, and, being first duly sworn, testified as
3199 follows:

Direct Examination by Mr. McBride.

Q. Will you state your name and address for the record, Mr. Petit?

A. Wallace H. Petit.

Q. And your address?

A. Selma and Willow Branch.

Q. That is in Jacksonville?
A. Yes, sir.
Q. What is your occupation?
A. Branch manager. Branch office manager might be more complete.
Q. Of what company?
A. Economy Wholesale Grocery Company, Inc.
Q. And that is the branch in Jacksonville that you are referring to?
A. The Jacksonville branch.
Q. What are your duties as branch office manager, Mr. Petit?
A. I am general manager of the branch. That means that I see that the business of this branch is conducted in every respect.
Q. Do you have anything to do with setting prices?
A. I do have something to do with setting prices.
Q. Do you have anything to do with setting the
3200 prices on Morton's blue package salt?
A. I do.
Q. What sort of an operation does the Economy Grocery Company have here at its branch in Jacksonville—wholesale or retail?
A. We sell food items at wholesale to dealers only.
Q. To dealers only?
A. Yes, sir.
Q. Is that a credit and delivery or cash and carry, or how would you typify it?
A. Cash and carry.
Q. Entirely?
A. Entirely.
Q. How long has that branch been in operation here? By here, I mean Jacksonville?
A. Since October 3, 1938.
Q. Have you been branch office manager at all times since that time?
A. Yes, sir.
Q. What is the present resale price of Morton's blue package salt, per case?
A. $1.55.
Q. Is that your regular price?
A. Yes, sir.
Q. How long has that been the regular price?
3201 A. Since October 3, 1938.

Q. In other words, since the opening of the branch?

A. Yes, sir.

Q. Do you know what the cost of Morton's blue package salt is to the wholesale grocery company?

A. $1.50.

Q. Where do you purchase your requirements?

A. At present from the Winn & Lovett Grocery Company warehouse.

Q. And it is billed to the Economy Wholesale Grocery Company?

A. I shouldn't say requirements. We purchase salt from them. It is restricted to salt.

Q. By requirements, you mean salt requirements?

A. You asked where we were purchasing our requirements. We handle other things besides food. I take it you are referring to salt requirements?

Q. Yes.

A. We purchase those from the Winn & Lovett Grocery Company, here in Jacksonville at the present time.

Q. Are you currently purchasing all of your blue package requirements from the Winn & Lovett Grocery Company?

A. Yes, sir.

Q. And it is billed to you by the Winn & Lovett Grocery Company at $1.50 a case?

3202 A. Yes, sir.

Q. Do you know what the price of Morton's blue package salt is with respect to other wholesalers here in Jacksonville?

A. Wholesalers in our class, our category, which is cash and carry, it has been called to my attention that their price is $1.55 a case, the same as ours.

Q. What wholesalers are in your category of cash and carry?

A. National Wholesale Grocery and Tobacco Company, Daylight Grocery Company, Setzer's—those are all in Jacksonville.

Q. Do each of those have a retail price of $1.55?

A. As far as I know.

Q. How did the knowledge come to you that they have that price?

A. I read it on their published price list they issue periodically.

Q. Do you know what their price was at the time the

branch of the Economy Wholesale Grocery Company was opened in Jacksonville?

A. $1.55.

Q. And did you obtain that information in the same way, by examination of their price list?

A. Yes.

Q. Did that fact have anything to do with the $1.55 price established by the Economy Wholesale Grocery
3203 Company here in Jacksonville?

A. Yes, sir.

Mr. McBride: You may cross-examine.

Cross-Examination by Mr. Haslett.

Q. Why did the price of $1.55 of the various competitors have something to do with the price which you set on your sale of Morton's round package salt?

A. It is customary, but not mandatory to be competitive with other dealers in the same class as we are.

Q. Why do you want to be competitive, Mr. Petit?

A. Well, it will take a long time to answer that. As I said a while ago, it is customary. Another answer could be if we were not competitive our business would be penalized.

Q. If a competitor was selling at $1.54 and you had a $1.55 price, that might have some effect on your business; is that correct?

A. Yes.

Q. So, a cent differential in price might substantially affect your business?

A. On salt?

Q. On salt?

A. Yes, sir.

Q. That is right. Did you say "yes"?

A. Yes.

3204 Q. You stated that the price of $1.55 per case had been in effect since the Economy Wholesale Grocery Company opened its doors to do business here?

A. Yes, sir.

Q. When was that?

A. October 3, 1938.

Q. Were you the manager at the time it opened?

A. Yes.

Q. And you have been manager since?

A. Yes, sir.

Q. Now, you stated that the cost of the round package blue label, free running, iodized salt to your company is $1.50 a case; is that a fact?

A. Yes, sir.

Q. Do you get any rebate at all, sir?

A. I am not the buyer; therefore, I do not know. The cost as shown in the cost sheet that is furnished us by our company for our records shows $1.50, a case.

Q. Do you know whether or not your company gets any rebate from the Winn & Lovett Grocery Company on its purchases of the round package salt?

A. I do not know.

Q. I believe you stated that you were branch office manager? Would that come under your supervision?

A. No, I am really managing the operations of
3205 this particular branch. I don't buy the merchandise. I just requisition it.

Q. So, you do not know of your own knowledge just what the cost is?

A. Only that figure that is shown on our cost sheet.

Q. You do not know whether you get any rebate or not, do you?

A. I do not. It is not in my hands to know that.

Q. You stated that you have something to do with the setting of prices. What do you mean by the word "setting"?

A. By that, it is one of my duties as office manager for this branch, inasmuch as we are 350 miles from our headquarters in Miami, is to see that our prices are competitive.

Q. Would the cost of the commodity have anything to do with the resale price?

A. Yes, sir.

Q. Did you set the price of $1.55 per case?

A. In conjunction with our supervisor when we first opened up; we mutually agreed on that price.

Q. What was taken into consideration in agreeing on that price?

A. Competition.

Q. The cost wasn't taken into consideration?

A. No, sir.

Q. Because you didn't know the cost?

3206 A. Only as shown on our cost sheet, $1.50.

May I make that clear? As far as the operation of my branch is concerned, the costs as they are shown on the cost sheet are as far as we are obligated, and are our costs for that branch. It might not necessarily mean the cost for the item when bought by the purchaser. It is the cost to that branch.

Q. Then, Mr. Petit, if you had had a cost of $1.65 per case, you would still have a resale price of $1.55; is that correct?

A. No, sir.

Q. Why not?

A. Because we would have to make a profit.

Q. Oh, I see.

A. We would have to make a profit.

Q. Then the costs make a material difference in the retail price, then?

A. Yes, the cost does. The costs must be lower than the retail price.

Q. You wouldn't want to sell below cost?

A. Not as a regular thing.

Q. Assuming, Mr. Petit, that one of your competitors was paying $1.35 a case for Morton's round package salt, while at the same time you were paying $1.50 a case, and you were both selling to other dealers at $1.55 a

3207 case; would the fact that your competitor was purchasing the salt at fifteen cents a case lower than you, have any effect on your business?

A. I can not answer that, because I am not the buyer. All I do is sell the merchandise.

Mr. Haslett: That is all.

Mr. McBride: I have nothing further.

Trial Examiner Purcell: You are excused.

(Witness excused.)

3208 Mr. McBride: I will call as a witness at this time, on behalf of the Respondent, Mr. E. L. Hagin.

E. L. HAGIN, was thereupon called as a witness for the Respondent, and, having been first duly sworn, testified as follows:

Direct Examination by Mr. McBride.

Q. Mr. Hagin, will you state your name and address for the record, please?

A. Where I live or where I work?

Q. Where you live.

A. E. L. Hagin, 1820 Van Wert Street, Jacksonville, Florida.

Q. In what occupation are you engaged?

A. Wholesale grocery.

Q. With what company?

A. United Food Stores.

Q. Where is that located?

A. 1355 West Beaver Street, Jacksonville.

Q. Are you the same Mr. Hagin who testified 3209 some months ago in this proceeding as a witness on behalf of the Federal Trade Commission?

A. Yes, sir.

Q. How long have you been in the wholesale grocery business, Mr. Hagin?

A. This particular company?

Q. Yes.

A. Twenty-five years this past August.

Q. What is the nature of the operation of your company? Is it a cash and carry, credit and delivery, or what?

A. Credit and delivery; service, I guess you call it. We sell some stuff for cash.

Q. But it is primarily a service wholesale company?

A. Yes, sir.

Q. Do you employ traveling salesmen, Mr. Hagin?

A. Yes, sir.

Q. How much territory, geographically, in terms of radius outside of Jacksonville, does your company cover?

A. We go about 150 miles down the East Coast, and we go as far west as Cross City; I think that is about 130 miles; Brunswick is 80 miles. A radius, we will say, from eighty to one hundred and twenty miles, in a circle around Jacksonville?

Q. That territory has been covered for the past several years?

3210 A. Yes, sir.

Q. Do you handle salt?

A. Yes, sir.

Q. Can you describe the various types of salt and salt packages that you handle?

A. We handle salt in 280 pound barrels, baker's salt; 100 pounds, common fine; 100 pounds, sea grade salt or water softener salt; 100 pounds, ice cream salt; 50 pound bags of ice cream salt; fifteen four pound packages of ice cream salt; six, ten pound bags of common fine. We hand thirty-six, one and a half pound packages of a competitive square package salt. They call it competitive because everybody puts it out. We handle Morton's in round packages, Cary's salt in round packages, and stock salt; that is in 50 pound blocks of mineral salt, iodized salt, sulphur blocks, plain blocks, fifteen, four pound plain and sulphur; Blackman's salt bricks. I think that about covers the salt stuff.

Q. Of those items, Mr. Hagin, which would you designate as table salt items?

A. Package salt is usually called as table salt.

Q. That would be the one and a half pound squares and various round packages?

A. That is right.

Q. Would you say that you handled Morton's blue package salt?

3211 A. Yes, sir.

Q. What is the retail price of that per case, Mr. Hagin?

A. The retail price?

Q. Resale price?

A. Resale?

Q. That is right. The list price?

A. Our list price is $1.75. That is the outside price; what they call the ceiling price.

Trial Examiner Purcell: What is that?

A. We have to have a ceiling price.

Q. (By Mr. McBride.) And has that list price been in effect for some time?

A. Yes, sir.

Q. Approximately how many years, if you recall?

A. Well, that is hard to say. I do not remember that

far back, but we sell all merchandise according—without going back over the records, I couldn't say, but it has been for some time.

Q. It has been for some time?

A. Yes, sir.

Q. Do you recall what the prices are on the one and a half pound squares?

A. The thirty-six, one and a half pound square packages?

Q. Yes; that is your ceiling price?

A. I wouldn't be too sure, but I think our ceiling is 3212 ninety-five cents.

Q. What is the cost of Morton's blue package salt, Mr. Hagin?

A. We pay $1.50, and a rebate of ten cents a case from that,

Q. And the ten cents per case comes from where?

A. The Winn & Lovett Grocery Company.

Q. What are the factors that enter into the setting of your resale price to the trade? What factors do you consider?

A. What is that now?

Trial Examiner Purcell: Read the question.

(The question was read.)

A. I don't catch the meaning of that.

Q. By that, I mean this, Mr. Hagin: When you arrived at the $1.75 price on Morton's blue package salt, what business factors did you consider in arriving at that price instead of at some other price?

A. Just because it is a fair margin of profit.

Q. Did you, as a matter of fact,—Excuse me.

A. A fair margin of profit on our turn-over.

Q. Then you did take into consideration a margin of profit that you wanted and the turn-over that you have, and related the two?

A. Yes, sir.

Q. Is that correct?

3213 A. Yes, sir.

Q. Would your cost of doing business have any bearing on the price you set on Morton's blue package salt?

A. Well, our cost of business would have a lot to do with any merchandise that we would sell. We have to get

as much or a little bit more than the cost of operating, or we wouldn't stay there.

Q. What do you use as a cost basis in figuring your margin of profit, at $1.75, on Morton's blue package salt, Mr. Hagin?

A. What is that now?

Trial Examiner Purcell: Read the question, Mr. Reporter.

(The question was read.)

A. I answered that before, I think, in the other testimony and I would just like to know exactly what I said, because we don't sell—understand, there are many times we sell Morton's salt or any other item, particularly on bid, when we cant hew straight to the line. If we did, there wouldn't be any use bidding on the order, because we wouldn't get it. It would be foolish to take up the time to bid on the order.

Q. You have reference there to your resale price; isn't that correct? With respect to bidding for business?

A. Yes, sir.

Q. What I wish to know is this, Mr. Hagin: In arriving at your resale price, do you use the $1.50 price, or
3214 do you use the $1.40, taking the ten cent rebate off, as a basis for figuring your resale price?

A. No, we never sell salt at $1.50, Morton's salt at $1.50.

Q. Do you apply the margin of profit, the percentage of mark-up you think you should have on Morton's blue package salt, on the $1.50 or on the $1.40?

A. As I recall it,—I want to get the wording so you will all understand it. If you have the previous testimony that I made.

Trial Examiner Purcell: Off the record.

(Discussion off the record.)

Trial Examiner Purcell: On the record.

Q. (By Mr. McBride) Mr. Hagin, how many commodities, on the average, does your company handle, including the various salt items that you have mentioned here, as nearly as you can estimate?

A. Taking in consideration the different sized packages of so many items, such as canned corn or peas, several different sizes, and beans, I think there are twenty-five hundred different items.

Q. Do you know what your purchases have been of

Morton's blue package over the past two or three years, in numbers of cases?

A. 1940 was approximately 1400 cases, and 1941 was approximately 900 cases, and so far this year has been
3215 thirteen hundred cases.

Q. That would be up to the present time?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. Do you know what the resale prices of any of your competing wholesale companies are here in Jacksonville?

A. I couldn't answer that.

Q. On Morton's blue package salt?

A. I couldn't answer that question, because I never see that price list or their invoices. A jobber, as a general thing, does not get out price lists. We are about the only one that does get out monthly price lists.

Q. Do you pay any particular regard to the resale price that might be in effect from time to time by competing wholesalers?

A. I would imagine our prices are along in line, or we wouldn't enjoy the volume of business we do on many items we sell.

Q. As I understand it, you make no specific attempt to determine what all of your competitors are selling Morton's blue package salt for?

A. That is right.

Mr. McBride: You may cross examine.

3216 *Cross-Examination by Mr. Haslett.*

Q. Mr. Hagin, the price which you pay for your commodities is important, an important factor in your business, isn't it?

A. Oh, yes.

Q. It is one of the very important factors, isn't it?

A. Sir?

Q. It is one of the very important factors, isn't it?

A. Well, if we didn't watch the cost price, we wouldn't probably be able to compete with our competitors.

Q. What do you mean by competing with your competitors?

A. Competing in the way of prices. We have got to be reasonably in line with our competitors, and give equally

as good service, or maybe there wouldn't be a lot of business that we wouldn't get.

Q. Was competitors' price taken into consideration at the time the $1.75 price was set on Morton's salt by your company, the resale price?

A. Before the price control, we never contacted our competitors as to what they were getting for an item, because we put a reasonable price on our cost and tried to do business on that basis. If we happened to run into an item we couldn't merchandise enough of to pay us to bother with it, we cut it out of our line.

3217 Q. Since the price control has been in effect, have you contacted your competitors to determine what prices they are charging for their various commodities?

A. We—

Mr. Mc Bride: I think I will object to that. I am willing to state my objection off the record.

Trial Examiner Purcell: Off the record at the request of counsel, Mr. McBride.

(Discussion off the record.)

Trial Examiner Purcell: On the record. Let me get the question.

. . . The question was read.

Trial Examiner Purcell: After the discussion off the record, do you still wish to press your objection?

Mr. McBride: I will withdraw the objection.

Trial Examiner Purcell: Proceed.

Mr. Haslett: Now, you may answer the question. Will you read the question, please.

. . . The question was read.

A. This only refers to Morton's round package salt. We haven't contacted any competitors with reference to the price they are getting for Morton's round package salt, because we have a ceiling price.

Q. (By Mr. Haslett) That price had been in effect for a long time?

3218 A. Yes, sir.

Q. Do you know when that price was put into effect?

A. Not without going into the record. I can't remember that far ago.

Q. Has it been five years or ten years?

A. I wouldn't say without going into the records.

Q. I believe you stated, Mr. Hagin, that your company

received a rebate of ten cents on its purchases of Morton's round package salt?

A. Yes, sir.

Q. And that comes through the Winn & Lovett Grocery Company?

A. We buy all of our round package Morton salt from them.

Q. Do you buy other types of salt from them?

A. No.

Q. You buy then direct from Morton the other types of salt you purchase?

A. No, we buy some salt from Morton; very little.

Q. Prior to the time that you began to receive this rebate on the round package salt, did you purchase it direct from the Morton Salt Company?

A. Without getting into the records, I can't answer you correctly.

Q. You do not remember?

A. It has been some years we have been buying 3218 through Lovett.

Q. How many years?

A. I would have to get those charges out. I couldn't tell you. It might be five years, or it might be eight years. It is several years.

Q. Do you recall at any time you were purchasing round package salt directly from the Morton Salt Company?

A. To the best of my knowledge, we have. To the best of my knowledge.

Q. Why do you now purchase through the Winn & Lovett Grocery Company?

A. Because we get a rebate of ten cents a case.

Q. That is the only reason?

A. Yes, sir.

Q. You couldn't get that rebate otherwise?

A. I do not suppose we could.

Q. What do you do with that rebate, Mr. Hagin?

A. We keep it as an extra profit on that package.

Q. As an extra profit?

A. Yes, sir.

Q. Is it taken into consideration in arriving at—strike that. Do you feel that your company would be at a disadvantage by the fact that one of your competitors was getting the ten cent rebate and your company was not getting the ten cent rebate?

3220 Trial Examiner Purcell: Will you read the question, Mr. Reporter.

(The question was read.)

Mr. Haslett: I will reframe the question.

Q. Do you feel that your company would be at a disadvantage if one of its competitors was receiving a ten cents a case rebate, while at the same time your company was purchasing Morton round package salt and not receiving any rebate on its purchase?

A. We would naturally be to a slight disadvantage on that particular item, but there are so many items that we sell, and undoubtedly we buy many items cheaper than our competitors, and they buy different items cheaper than we do, and those prices are all probably averaged up in the course of a year's business.

Q. We are just interested in salt in this proceeding, Mr. Hagin, and what the Commission is desirous of knowing is whether or not in the round package salt business, your business would be affected in any way by the fact that one of its competitors was purchasing at a lower price?

A. No, I don't think the ten cent rebate would make us sell any cheaper.

Q. But it would mean that your competitor was making more money on it, wouldn't it?

A. It would, certainly.

3221 Q. To that extent, it would affect your business?

A. To a slight degree, yes.

Q. Do you think the price which your company is paying for its various commodities is taken into consideration in setting its resale prices?

A. What is the question?

Q. Do you take into consideration the price, or the cost of the commodity when arriving at the prices you are going to sell it to your customers at?

A. Do we take into consideration the cost?

Q. Yes, sir.

A. Oh, yes.

Q. And the cost of the Morton salt, the round package salt, was taken into consideration in arriving at the $1.75 figure?

A. Let me get that question clear.

Trial Examiner Purcell: Will you read it, please, Mr. Reporter?

(The question was read.)

A. Yes, I guess it was, yes, sir.

Q. (By Mr. Haslett) And the cost to you at the present time on the round package salt, the actual cost is $1.40 a case, isn't it?

A. Yes, sir.

Mr. Haslett: I think that is all.

3222 Trial Examiner Purcell: Any redirect examination, Mr. McBride?

Mr. McBride: I am not sure. Just a moment, please. I think that is all.

Trial Examiner Purcell: The witness is excused.

Mr. McBride: Thank you very much, Mr. Hagin.

Trial Examiner Purcell: Thank you for coming in.

(Witness excused.)

Trial Examiner Purcell: Call your next witness, Mr. McBride.

Mr. McBride: We will call as our next witness on behalf of the respondent, Mr. Chitty.

A. B. CHITTY, was thereupon called as a witness for the respondent, and, having been first duly sworn, testified as follows:

Direct Examination by Mr. McBride.

Q. Mr. Chitty, will you state your name and address for the record, please?

A. My residence?

Q. Yes, sir.

A. A. B. Chitty, 2953 Riverside Avenue, Jacksonville, Florida.

Q. In what business are you engaged, Mr. Chitty?

A. We call it a wholesale food distributing business. Wholesale food distributors is the way we

3223 qualify it.

Q. With what company is that?

A. Chitty & Company. Chitty & Co. The company is not spelled out. Chitty & Co.

Q. And you are the same Mr. Chitty that testified previously on behalf of the Commission?

A. Yes, sir.

Q. Is the principal office of Chitty & Company located here in Jacksonville?

A. Yes, sir, 104 Stockton Street, or 106. Just say Stockton Street, please, sir. I do not remember the address.

Q. How long have you been engaged in the wholesale business?

A. Since 1905.

Q. With the same company?

A. And its predecessors. I have been connected with various companies; it has been a different name, but I have succeeded the various companies, of course.

Q. It has been a continuous business?

A. Oh, yes, it has.

Q. During that time?

A. Yes, sir.

Q. What is your method of operation, Mr. Chitty, having reference now as to whether it is cash and carry or a service type of wholesale business?

3224 A. Well, I think our business is generally supposed to be what is termed a service business; that is, we deliver and charge. We do not—I don't mean we wouldn't accept cash orders, but we don't sell—our business is not set for cash and carry, you understand.

Q. Do you employ salesmen?

A. Oh, yes.

Q. In how large a radius outside Jacksonville does your company operate?

A. Well, let me see. We go as far west as Tallahassee. I think that is 170 miles. We go up here to Brunswick, Georgia, and I think that is seventy-five or eighty miles. South, we go to Wildwood, which, I think, is about one hundred and ten or a hundred and fifteen miles. East, I guess what we would call east, the east coast territory, I guess we go around 175 miles.

Q. And that has been your method of operation for a considerable length of time?

A. Yes, sir.

Q. Do you handle salt in your business, sir?

A. Yes, sir.

Q. Will you describe the items of salt which you handle, Mr. Chitty?

A. Well, this would be—I wouldn't want this to put me in jail, but I think that there are only five items in

3225 salt, five different packages. I don't want to go to jail for making a statement that isn't exactly correct.

Q. Just your best recollection is all, and you won't go to jail on that. Do you handle Morton's blue package salt, Mr. Chitty?

A. Yes, sir.

Q. Round package?

A. Yes, sir.

Q. That would be one of the items?

A. Yes, sir.

Q. Do you carry any thirty-six, one and a half pound square packages?

A. Yes, sir.

Q. Do you have other round packages besides Morton's round package salt?

A. No, we don't carry any other round package salt.

Q. And then you have bulk items of one sort or another?

A. Yes, sir, we carry the 100 pound bulk, so-called, fine salt for meat curing. That is one. Then we carry the so-called ice cream salt—that is used for freezing ice cream or something. That is two. And then we have the square packages; that is three, and then I think we carry ice crea m salt either—in four pound packages; that goes through the retail stores. I think that is about the items we handle.

3226 Q. Those are purchased from various salt companies from time to time?

A. Yes, sir.

Q. What is the price that you place on Morton's round package salt?

A. $1.65 is our price now.

Q. $1.65?

A. Yes, sir.

Q. Do you remember how long that has been in effect, Mr. Chitty?

A. Well, it has certainly been in effect since the first of March. It must have been our price the first of March because that is when we were supposed to have a ceiling. We can lower the prices on the ceiling, but we can't advance them. We must have had that price at least the first of March of this year. I think—again appealing not to be held too strictly—I think we have sold it for $1.65 all year.

Q. Do you remember whether that was your price last year and previous years?

A. No, I really do not, but I am inclined to think it was

around $1.65 or $1.70 last year, but I declare I just must have a little leeway there. I couldn't say.

Q. Do you know the price at which your various competitors sell Morton's blue package salt?

3227 A. No, sir, I do not.

Q. Have you ever taken the occasion or had the occasion to attempt to determine at what price your competitors offered Morton's blue package salt at?

A. No, sir, we haven't.

Q. To what extent is the price of your competitors a factor in setting your own price?

A. Well, of course, there is always competition; competition is always a factor. At the same time, I think mo every concern finally, that has been in business as long as we have, finally have to adopt a policy of their own as to how far to go with competition, and I would say that we try to avoid being forced into what we call highly competitive prices, as much as we can.

Q. And that is your present policy now?

A. Yes, sir.

A. As to the blue package?

A. Yes, sir.

Q. Including the various salt items, Mr. Chitty, approximately how many items will your company handle in its wholesale business here in Jacksonville?

A. Well, you know that has got to be flexible, because at this particular time, I guess this concern is three or four hundred items short. I would say, normally, we would have fifteen hundred or seventeen hundred items, normally, but it wouldn't be that now.

3228 Mr. McBride: You may cross-examine.

Cross-Examination by Mr. Haslett.

Q. Mr. Chitty, what does your company pay for its round package salt, per case?

A. During this year we paid $1.50, sir.

Q. Does your company receive any rebates or allowances from the Morton Salt Company?

A. We haven't been promised any this year. Either by written or oral advice they told us that they wouldn't promise us any rebate on our quantity or allotment of five thousand cases this year.

Q. So you haven't gotten it this year that you know of?

A. No, sir.

Q. But you have gotten it heretofore?

A. Yes, sir.

Q. Have you purchased five thousand cases during this year, Mr. Chitty?

A. No, sir, we haven't purchased that much. I really don't know how much we have, but I know we haven't purchased that much.

Q. Did you purchase five thousand last year?

A. Oh, yes. We always had to purchase five thousand cases to get the rebate. They held our feet to the fire, of course, on that.

3229 Q. Did you know that some of your competitors are getting the ten cent rebate, notwithstanding the fact that they don't purchase nearly the five thousand cases required.

A. No. sir.

Mr. McBride: Mr. Examiner, I object to that. I think that is taking an awfully lot of liberty with the record. I don't think there is anything in the record that will substantiate a question in that form.

Trial Examiner Purcell: Off the record.

(Discussion off the record.)

Trial Examiner Purcell: On the record. Read the question.

(The question was read.)

Trial Examiner Purcell: Off the record, again, please.

(Further discussion off the record.

Trial Examiner Purcell: On the record.

Because of the inference of the question by counsel that this discount has been granted direct by the Morton Salt Company, I will uphold the objection of counsel for the respondent. Counsel may re-frame the question if he wishes.

Q. (By Mr. Haslett) Do you feel, Mr. Chitty, that the Chitty Company's business in Morton's round package salt would be in any way affected by the fact that the Hagin-Peters Company purchased 1300 cases of Morton's

3230 round package salt and received a ten cent rebate on such purchases, while, at the same time, your company has purchased in larger quantities and received no rebate?

A. Well, I think it would have an effect in this way, that we would naturally handle salt; we are now getting what we deem the lowest possible profit or handling charge we

would be willing to handle it for at this time, plus fifteen cents for handling. If our competition should possibly go below our selling price of $1.65, possibly we wouldn't sell very much salt. I guess that is the best answer I can give you because I would have to deal in what might be—in other words, we won't sell salt any cheaper than what is based on our cost. Unfortunately, if they sell their salt on a fifteen cent margin based on their cost, I think it would affect our sales.

Q. They would be ten cents under you then?

A. Ten cents, yes, sir.

Q. So, the cost of the product is indeed an important factor in setting the resale price?

A. I would think so, yes. I can't see why, especially if a man wants to use it as a part of his cost. Some times rebates are not used in that way. They are set up in different ways.

Q. Did the Morton Salt Company ever advise you that it would be satisfactory to them for you to purchase
3231 your requirements through the Winn & Lovett Grocery Company, and get the ten cent rebate?

A. No, sir. No.

Q. They did not?

A. No.

Q. Is it desirable for your company to have the ten cent rebate on its purchases of round package salt, if your competitors are getting that price?

A. Oh, yes, it is desirable, of course; naturally.

Q. For what reason, sir?

A. Well, you know there is rather a mental or psychological reason for men in business. A man wouldn't feel right. I wouldn't want to promote a product, you understand, where I felt I wasn't getting a square deal on it. I do not know any better way to explain it. Of course, the items in the food line are very necessary and it so happens in many instances we handle some stuff that we almost dislike to handle, because it would upset—well, I do not know.

Q. Do you think A. B. Chitty & Company are getting a square deal from the Morton Salt Company by the fact that Hagin-Peters Company are getting a ten cent rebate on 1300 cases, while at the same time your company purchases in larger quantities and gets no rebates?

A. It isn't in accordance with my idea of fairness, no, sir.

3232 Mr. Haslett: I think that is all.

Redirect Examination by Mr. McBride.

Q. Mr. Chitty, with respect to your purchases of the blue package salt during the year 1941, when did you receive your ten cent discount from the Morton Salt Company?

A. Well, now—Haven't those records? Aren't they on file here. I brought up a whole batch of stuff up here.

Trial Examiner Purcell: Off the record.

(Discussion off the record.)

Mr. McBride: Let me withdraw my question. Mr. Examiner, I would like, in view of the discussion off the record, to withdraw my last question to the witness.

Trial Examiner Purcell: Permission is granted to withdraw it.

Q. (By Mr. McBride) Mr. Chitty, I show you Commission's Exhibit No. 104, which is a credit memorandum from the Morton Salt Company, dated January 23, 1942, to your company for $508.50. Will you examine that and state if you can what period of purchases are covered by that credit memorandum?

A. Well, now, I think that is the way these were audited. You see, when these come in,—I don't handle them. They go to the bookkeeper, and he takes this credit memorandum, and I said they should correspond with the ten cents a
3233 case for purchases in the calendar year previous to this.

Q. As nearly as you know that credit memorandum would cover your purchases for the calendar year 1941?

A. That is the basis on which it is supposed to be audited. As I say, unless I hear from it, I am assuming that was the audit given on it. Do you understand what I am driving at.

Q. Mr. Chitty, has anybody from the Morton Salt Company advised you that you would not receive the ten cents per case discount if you purchased five thousand cases or more during the calendar year 1942?

A. Here is my recollection: I don't think I ever got that in writing. I think you gentlemen will have to recall if that is right, I do not know. My recollection is they either told me there would not be ten cents a case for the year 1942 on account of this litigation. That was the reason given me, that this litigation might have some effect on your future plans. I do not know.

Q. That was the only reason given you?
A. Yes, sir.
Q. So that if the litigation has no effect on our plan of operations, you haven't been advised that you wouldn't get the ten cents?
A. That is the only advice I have had. I have had no advice to the contrary, understand.
3234 Mr. McBride: I have no further questions.

Recross Examination by Mr. Haslett.

Q. Do you know how many cases you have bought this year, Mr. Chitty?
A. No, I don't know, but I would say we did buy the normal quantity. You see, there are three places that comes in there, for the Jacksonville place, Orlando and Miami. They are all thrown together as one unit, and I guess our salt sales would run along about the same. If I had had that question, I could have easily found out.
Q. Mr. Chitty, when did you receive a discount from the Morton Salt Company, as shown by Commission's Exhibits 104, 103 and 102, they were on the combined purchases of the branches?
A. Well, you see it is all one name. Yes, it is three; three various markets.
Q. I see.
A. They do their own buying, but these figures are segregated from the three.
Q. But no single warehouse of Chitty & Company bought five thousand cases?
A. No.
Q. Of Morton's free-running salt during any twelve months' consecutive period?
3235 A. I don't think so. It wouldn't indicate that we bought it in any one place.
Mr. Haslett: I think that is all, Mr. Chitty.
Mr. McBride: I haven't anything further.
Trial Examiner Purcell: Thank you, Mr. Chitty. You are excused.

Room 521, United States Post Office
and Federal Building,
Jacksonville, Florida,
Tuesday, November 3, 1942.

Met, pursuant to agreement and notice, at 10:00 a. m.

Before:

James A. Purcell, Trial Examiner.

Appearances:

John T. Haslett, Esq., Attorney for the Federal Trade Commission.

L. M. McBride, Esq., 310 South Michigan Avenue, Chicago, Illinois, attorney for respondent.

3237 Mr. McBride: Mr. Examiner, I wish to have the record show that I have dismissed as a witness, called under subpoena, Mr. Edwin H. Hill, of Hill Brothers, Inc., Miami, Florida, by reason of advices which I have received that Mr. Hill is sick and unable to travel. Therefore, he will not be called or held to the terms of the subpoena.

Trial Examiner Purcell: All right. Let the record so show.

Mr. McBride: Mr. Examiner, I call as the next witness on behalf of the respondent, Mr. Edward J. Keefe.

3238 EDWARD J. KEEFE, was thereupon called as a witness for the respondent, and, having been first duly sworn, testified as follows:

Direct Examination by Mr. McBride.

Q. Mr. Keefe, will you state your name and address for the record, please?

A. E. J.—Edward J. Keefe, Tampa, Florida. Bryan-Keefe & Company, wholesale grocers.

Q. Bryan-Keefe & Company are located in Tampa, Florida, are they?

A. Tampa, Florida.

Q. Is that a corporation, Mr. Keefe?

A. Yes, sir.

Q. You are the principal operator of the corporation?
A. I own practically all of the stock.
Q. You are the same Mr. Keefe who testified as a witness on behalf of the Commission in this case a couple of months ago, in Tampa?
A. Yes, sir.
Q. How long have you been—strike that, please. What business is the Bryan-Keefe Company in?
A. The wholesale grocery business.
Q. How long have you been engaged in that business, Mr. Keefe?
3239 A. As an employe and owner, since 1903.
Q. Under various names?
A. It was originally Snow & Bryan, and then Bryan-Keefe Company.
Q. That has been continuously in Tampa, Florida?
A. Yes, sir.
Q. What type of wholesale operation does your company perform, Mr. Keefe—having reference now to cash and carry or credit and delivery. Will you just generally describe your manner in which you operate?
A. Of course, we use credit and delivery, and we also have one end of the warehouse for the accommodation of our cash and carry business.
Q. So, you perform both functions?
A. Yes, sir. We haven't always done that, but we have in the last three or four years. Only the first function at first, and in the last three or four years the last function, or both of them.
Q. In other words, the cash and carry part of the business was opened up three or four years ago?
A. Yes, sir.
Q. And prior to that it was a credit and delivery business?
A. Yes, sir.
Q. Do you handle salt in your wholesale business, Mr. Keefe?
A. Yes, sir.
3240 Q. Will you describe the various types of items of salt which you handle?
A. We handle one hundred pound bags of various grades, ice cream, fine, square, flat package of the cheap salt, and then we have the round packages of the evaporated salt.

Q. The square flat packages, are those the one and one-half grades?

A. Yes, sir.

Q. Thirty-six to a case?

A. That is right.

Q. And the round evaporated salt, is that the Morton blue package salt?

A. We handle Morton's, and have handled some other brands—Cary's. It is packed 24, and was thirty-two at one time.

Q. That is in the round packages?

A. Yes, sir.

Q. In addition to the salt items, you handle a number of other items, a number of other grocery commodities, do you not?

A. Yes, sir, we handle a full line of groceries, and grocery sundries.

Q. Approximately how many items, as nearly as you can estimate, would your company normally handle there in Tampa, eliminating from your calculations any shrinkage due to war conditions?

3241 A. Well, in the number of items—our inventories are about 100 pages, thirty to a page—we will have three thousand items. That will include the different sizes of different items.

Q. All sizes and brands?

A. Yes, our inventory sheets will show about three thousand items. On tomatoes, we will have eight or ten sizes, pork and beans, fifteen or twenty, but, all told, about three thousand items.

Q. What is the resale price which you have now on Morton's blue package salt, Mr. Keefe; by that, I mean the round package?

A. That is $1.75.

Q. $1.75.

A. Yes, sir. $1.70, $1.75. I may have $1.65. It varies somewhat with the types of service we render.

Q. What would the dollar sixty-five price be for?

A. That would be close-in customers, right in town, or cash and carry; $1.65 in town, and it depends on conditions prevailing in the market, but we vary that price based on the service rendered. Of course, salt being cheap and heavy, if we have to haul it some one hundred miles, we try to get $1.7[illegible] $1.80 some times to take care of drayage.

Q. So, your bottom price would be $1.60 cash and carry?

A. That is the bottom price. That is as close an
3242 estimate as I can get.

Q. Then that would be stepped up, according to the service rendered?

A. Yes, and our ability to get men one hundred miles away; on that we would charge maybe $1.80, or so. Normally, our price would be $1.60, cash and carry, and $1.70, credit and delivery, close-in, and $1.75 out thirty or forty miles.

Q. Has that same range of prices prevailed for some time, do you recall, Mr. Keefe?

A. Yes. Yes, I have these cost sheets, and I see it has been running uniform for years. We have had—

Q. (Interposing.) You refer to cost sheets. Are those your own cost sheets?

A. Not only my own, but my personal cost sheets. I keep a book, which is kept up, and you will notice all these notations on it, and I see Morton's salt here at $1.65, and $1.70. That was in 1941. Morton's salt, $1.65, $1.70; Morton's salt, $1.65, $1.75. Morton's salt, $1.60, $1.75. Here is back in 1937, your price was $2.00, then $2.25, it cost more in 1937. We reduced Morton salt prices. $1.75; 1936; Morton's salt in 32s. That is at $2.25. I believe that would be the same price. We haven't changed the price since 1936.

Q. The $2.25 price was when you had a different number of packages?

A. Yes, it was 32 packages—24 for $1.70. That
3243 would be one-third more. It is exactly $2.26, it would be. It would be $1.75, so no change in our price on salt has been made since 1936.

Q. Since 1936?

A. Yes, sir. There may have been a nickel difference, because of conditions and what not, but generally we got about that price for years, and I notice the cost, we have got the cost at $1.50 all during that period.

Q. The cost during the entire period was $1.50?

A. Yes, allowing for the difference in that package.

Q. Do you receive any quantity discounts, Mr. Keefe?

A. Yes, we have a five thousand case allowance of ten cents a case.

Q. And do you recall when you first started receiving that?

A. We have had two payments. I wouldn't know the

exact date, but it was in the early part of the year, and when the year elapsed we collected, and when another year elapsed, we collected, and now we are working on the three, on the third year.

Q. You are now working on the third year?

A. Yes, sir.

Q. So, you have had two full twelve months' periods prior to this yes?

A. Yes.

Q. And working on your third one?

3244 A. Yes, sir, working on our third one.

Q. In computing your resale price, what do you use as the basis, Mr. Keefe; $1.50, or $1.40, taking the discount off?

A. As I said, these cost sheets—of course, they are in code, but you could unravel them. It would make a good cross-word puzzle. It is $1.50 uniformly through there. We would never think about the $1.40. $1.50 is all we know about.

Trial Examiner Purcell: Off the record, please, Mr. Reporter.

(Discussion off the record.)

Trial Examiner Purcell: On the record. Proceed.

Mr. McBride: Will you read the last question and answer?

(Question and answer read.)

Q. (By Mr. McBride.) What do you do, then, with the ten cent quantity discount to which you have referred, Mr. Keefe? How is that handled?

A. When we receive the check, we credit it to profit and loss. It is just that much gain.

Q. Just as additional miscellaneous income?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir. The fact is, as you know, that we don't know whether we are going to get it or not.

Q. Until the twelve months' period has elapsed?

3245 A. Yes, sir.

Q. What factors do you take into consideration, Mr. Keefe, in setting the resale prices on Morton's blue package salt?

A. On the service that we deliver on, and general overhead.

Q. Are they both factors entering into your consideration?

A. Yes, salt is cheap and heavy, and, naturally, we would like to and try to make a fairly good profit in dollars and cents. Of course, in general, we figure we should make ten per cent on the general line, but ten per cent on salt is sometimes inadequate to pay the drayage charges, so we put a little more profit on the salt.

Q. I see. And have you done that with respect to Morton's blue package salt?

A. Yes, we try to make fifteen, twenty. As I say, if they come after it, we feel we can handle it for a time; if we have got to deliver it, we should get about a dime more, and in extremely long distances, about fifteen more.

Q. Then you regard the $1.60 price as being an adequate mark-up, for your cash and carry where you have no delivery charge?

A. Yes, I think that is all right.

Q. But you regard $1.65 as being what you want as your price, where you have a delivery charge?

3246 A. Or even more than $1.65 if the distance is a long ways off.

Q. To what extent, if any, Mr. Keefe, does your volume enter into your computation of your resale price?

A. You mean on a particular item?

Q. On the blue package salt?

A. The volume, relatively, is small, of course.

Q. Perhaps I should make it more clear. I should say "turn-over", in order to avoid any ambiguity.

A. If it turns over promptly, we usually take that into consideration, and will handle it on a slightly closer margin. On some items, the mark-up is thirty-three and forty per cent.

Q. Where the turn-over is slow?

A. Where the turn-over is slow, like lamp wicks, lamp burners. Some hardware dealers will mark those up thirty-three and forty per cent. They have to charge a big profit, and we just fall in line.

Q. You mentioned just a minute ago that you wanted to receive, in general, an average of ten per cent mark-up on your entire line?

A. Yes; our expenses of doing business are usually around seven and eight per cent, and if we can make ten per cent, we will fly high, and can pay a big income tax.

Of course, all percentages are just relationships.
3247 They are not really money. Ten per cent on a sack of salt would bust us by the time we paid the drayage. Ten per cent doesn't begin to handle it.

Q. That is because of the additional weight per unit of salt?

A. Yes, sir.

Q. Mr. Keefe, if you didn't receive the quantity discount of ten cents a case on Morton's blue package salt, what would your resale price be?

A. We wouldn't change it. We didn't change it when we got it.

Q. But your resale price would continue whether you got it or not? Your resale price would continue whether you got it or not, is that right?

A. We didn't reduce it when we got it. We left the cost unchanged. If I can refer to our sheets again, I can tell you definitely as to what we did. I dug them up for that purpose. We made no change when we got the ten cents, because we figured we didn't have that dime before, and times were pretty bad a few years ago in the grocery business.

Q. Now, Mr. Keefe, if you can make some mental calculations, can you estimate as to what percentage of the total gross sales of your company are accounted for by the blue package salt sales?

A. That is, in dollars and cents?

3248 Q. Yes.

A. I was just thinking about that sitting over there, as to how much it amounted to.

Trial Examiner Purcell: Let the witness give his answer without taking in all of his thoughts. We would like to hold the record down.

A. Well, we do about one million eight hundred thousand dollars worth of business, and our salt would be about seventy-five hundred dollars less than one-half of one per cent.

Q. (By Mr. McBride.) That is, with respect to the volume of the blue package salt alone?

A. Yes; I should say, including other salt, less than three-fourths of one per cent.

Q. With respect to your one and one-half pound squares, Mr. Keefe, do you recall what your resale price is now on those?

A. I will look at this again. It is printed there.
Q. You may refer to that.
A. Here it is.
Q. Give that for the last year, Mr. Keefe. I don't care particularly for all of the years on that.
A. $1.00 and $1.05.
Q. $1.00 and $1.05?
A. Yes, sir; $1.00, cash and carry, and $1.05, credit and delivery.
Q. That is for the 36, one and one-half pounds?
3249 A. Yes, sir.
Q. In the development of your wholesale grocery business, Mr. Keefe, do you have what you might describe as regular customers, or do you have—I am seeking a term—in-and-out customers? Will you describe the type of customers you have?
A. I should say we have about eighty-five per cent regular customers, and then fifteen per cent, as you say, in-and-out shoppers.
Q. With respect to the fifteen per cent shoppers, are they primarily in cash and carry, or primarily in other types of service?
A. They would be primarily cash and carry.
Q. So that your regular customers primarily would be in the credit and delivery end of your business?
A. Oh, yes.
Q. Roughly speaking, what percentage of your business would be accounted for by your regular customers; would it be a substantial percentage?
A. The credit and delivery customers take care of two-thirds of our business, and then our regular cash and carry customers would take care of the balance.
Q. Mr. Keefe, do you know what the prices are that your competitors have on Morton's blue package salt in the Tampa territory?
3250 A. I think it is around $1.50. We try to keep in line with them.
Q. About the same price that you have?
A. Yes, sir.
Q. And that has been generally true for some time, so far as you know?
A. Yes, sir.
Q. With respect to other commodities, Mr. Keefe, do you generally follow the prices of your competitors on the other commodities?

A. We try to average out. We don't follow them exactly. We will be high and low, but, in a general way, we have to stay competitive in the wholesale grocery field.

Q. Do you know, Mr. Keefe, of any given time when your prices on salt items, and I am referring now to all salt items, were lower than those of all of your competitors?

A. I do not recall. We wouldn't let them be that way. Salt is too heavy and expensive, and if one is fool enough to give it away we let them do it. We will not recognize that kind of competition.

Q. Have your prices on some of your commodities been lower than your competitors', to your knowledge?

A. Well, right now we are low on sugar, because we had a very low ceiling.

Mr. Haslett: I do not wish to interrupt, but will
3251 you read that last question, please?

Trial Examiner Purcell: Read the question.

(The question was read.)

Mr. McBride: Maybe I didn't make myself clear.

Q. (By Mr. McBride.) Do you know of any given time, Mr. Keefe, when the prices on all of your commodities were lower than the prices on all commodities of all of your competitors.

A. No, no, that has never happened.

Q. And, would your answer be the same as to whether or not in any given time, your resale prices on all commodities have been higher than those of all of your competitors?

A. I don't think that has happened.

Q. You would be high on some and low on others?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. And in the wholesale grocery business, you generally try to keep in line; some will be high and some low?

A. Yes, sir.

Q. Is that correct?

A. We must do that.

Q. That being true, Mr. Keefe, supposing you were for the time being five cents higher than some of your competitors on Morton's blue package salt, what would be
3252 the effect of that with respect to your regular customers?

A. It wouldn't have any particular effect in general.

Q. As long as you were generally in line on all of your prices, a five cent higher price would not have any particular effect?

A. We are up and down; some are cheaper and some high, and the customers have come to expect that. We are low on this and high on that, and it makes no appreciable difference that I know of.

Q. Mr. Keefe, do you know of any business on Morton's blue package salt that you have taken from any of your competitors in the Tampa market by reason of your receiving the ten cent discount, in the last two years?

A. No, I don't think that has ever existed. Of course, all business we get is taken from our competitors, but that ten cents hasn't been the reason.

Q. The reason has been other merchandising factors?

A. Yes, our customers have become dissatisfied and changed over to us, and we lose them the same way; they come and go.

Q. Do you know of any competitors of yours in the Tampa district or territory who have been forced to abandon the round package or Morton's blue package salt by reason of your receiving the ten cent rebate?

A. We have never been the cause of that; that is very definite. Our records show it. We haven't changed 3253 our price practice.

Q. Do you know of any competitors who have been forced to reduce their resale price on Morton's blue package salt by reason of your quantity discount?

A. No, sir.

Q. You do not?

A. No, sir.

Q. Mr. Keefe, if you were selling Morton's blue package salt at $1.65, and a competitor of yours were also selling Morton's blue package salt at $1.65, and you were paying $1.50 for that blue package salt per case, while your competitor was paying $1.40 per case, would your business be, in any way, affected by those circumstances?

A. I don't see why it should.

Q. Would it have any effect on your volume that you know of?

A. I don't think so.

Q. Would it have any effect, by way of injury, to the profit that you were making on your blue package salt?

A. No, I don't see why that should make any difference. I don't know what they pay for lots of their stuff. I guess the A. & P. gets goods a good deal cheaper than I do, in many cases.

Mr. McBride: I think you may cross-examine.

3254 *Cross-Examination by Mr. Haslett.*

Q. Mr. Keefe?

A. Yes, sir.

Q. Is competition an important factor in the pricing of your various commodities?

A. It is important, but competition in pricing is not a prime factor.

Q. But it is an important factor?

A. There are other things more important.

Q. And is the cost which you pay for your various commodities an important factor in your business?

A. Oh, yes, of course.

Q. Would you say that is very important?

A. Well, the—Yes. That is hard to say. It is important, of course, because we determine our selling price from what we pay for goods in most cases.

Q. You testified in connection with the selling of wicks, that there was a large mark-up on wicks because you followed the hardware dealers?

A. They set us a bad example in making too much profit on them.

Q. Would that be true as to salt, also?

A. If the other people had the same price on salt. We figure that salt is our own item; that is our business,
3255 but in the line of wicks, and what these things sell for, you get so much a gross, and we will put in a case.

Q. You feel that salt is your business?

A. Yes, sir, very much so.

Q. You stated that there has been no change in the resale price of your Morton's salt since you received the quantity discount, and that the $1.75, $1.70, $1.65 and $1.60 price had been in effect since 1936?

A. I think it was 1939, anyway. It may have been 1936. Yes, '38; '37, that is right. Here is the cost sheet dated 1936.

Q. At the time you were selling Morton's salt at these

prices, and not receiving the discount, you didn't make as much profit on the sale of salt as you now make?

A. No, sir.

Q. Is that correct?

A. That is correct.

Q. Because you had the ten cents extra?

A. Yes, sir.

Q. Since you had the ten cents extra, you could reduce the resale price ten cents, and still make the same profit?

A. Oh, yes, that is true, of course.

Q. The fact that you haven't done it, is the fact it is not necessary to do it?

A. It is not necessary to do it, unless it would be desirable. We did other things to earn the dime.

3256 Q. You testified as to the percentage of customers, being regular and those being shoppers?

A. Yes, sir.

Q. I think eighty-five per cent?

A. Of course, those figures are rather an estimate.

Q. That was an estimate?

A. I haven't really analyzed it, but I feel it is about that. It may be less. It may be ten per cent of it shoppers.

Q. It might be more?

A. No. We keep records on our customers, and when they don't show up, we trace it down. We talk it over. A salesman says, "Where is Mr. Brown? He hasn't been in this week." And he looks it up. I don't run these cases down individually.

Q. You do not know of your own knowledge?

A. Whether that has been done or not, no, not in specific instances, except in general. A salesman, when he is losing customers, he generally traces that down, and will try to straighten it out. But there is no definite accurate record kept of that, if that is what you mean.

Q. That is done just in a general way.

A. Just keeping up with the entire trend of your business; that is the idea.

Q. Mr. Keefe, you testified that if you were paying $1.50 a case for Morton's blue package salt, and selling at $1.65, or $1.75,—taking the $1.&5 price, and your com-

3257 petitor was paying $1.40 for it, and selling it for the same price, that your business would not be in any way affected?

A. I don't think it would. Of course, I wouldn't make as much per case on a case of salt as he might, but that wouldn't make or break me. My other business would go along, selling at a profit.

Q. You are thinking of the general wholesale grocery business?

A. Yes.

Q. Let us assume you were only in the business of selling Morton's salt?

A. Yes. Well, then, I would certainly—he would certainly make ten cents more per case than what I would if he got it for ten cents less. That is mathematics.

Q. And would it have a substantial effect on your business, Mr. Keefe?

A. Not necessarily. It might have a substantial effect on my profit on salt.

Q. He would have more money?

A. He would have more money left when he got done.

Q. And he could reduce it ten cents and still make the same profit you were making, and thus wipe you out?

A. He couldn't wipe me out. He could undersell me ten cents, but I would still sell salt. I am over-sold on a lot of items all the time.

3258 Q. I believe you testified you have a $1.60 price for your cash and carry?

A. Yes, sir.

Q. Mr. Keefe, would you assume as a statement of fact, that you are in the cash and carry business, selling only Morton's round package salt at $1.60 a case, and that you were paying $1.50 a case for it?

A. That is the only thing I said.

Q. And along comes a competitor and pays $1.40 a case for Morton's round package salt and sells it at $1.50 a case, which is the same price you pay for it. He is asking ten cents a case more on his salt than you are. What effect would that have on your business?

A. Not, if I sold enough salt.

Mr. McBride: Mr. Examiner, my usual objection to this, as being a hypothetical question.

Trial Examiner Purcell: The objection is overruled. He may answer.

A. I think some of my friends would still stick to me, and pay me ten cents more for it.

Q. (By Mr. Haslett.) Let us assume that he wouldn't?

A. That is something else again.

Q. You would have to go out of business?

A. If I would lose all of my business, and none came around, I would have to get out, but that ten cents
3259 wouldn't lose them all; not right away. I might have some uncomfortable moments, if I didn't sell anything.

Q. A threat would always be there, wouldn't it?

A. I would be wondering about it, naturally, but I don't think anybody could live and sell nothing but salt. I don't see how the manufacturers do it, because I know that I could not.

Q. Mr. Keefe, is the ten cents that you receive from the Morton Salt Company as a rebate on your purchases of Morton's blue package salt a desirable element in your salt business?

A. Yes, sir.

Q. You like to receive it?

A. Could I say why?

Q. Yes.

A. Principally because we don't know whether we are going to get it or not. Therefore, we don't reduce the price, and push salt at the regular price, and when it comes in it is so much velvet.

Q. It is just so much velvet to you?

A. Yes, sir.

Q. And you do not know whether you are going to get it or not?

A. We do not know whether we are going to make the quantity.

Q. But you have to purchase your five thousand
3260 cases before you can get it?

A. That is right.

Q. Do you, or would you think that it would be fair on the part of the Morton Salt Company to grant that ten cent rebate to one of your competitors if he purchased much less than five thousand cases?

Mr. McBride: If the Examiner please, I object to that on two grounds. First, as to what is or is not fair on the part of the Morton Salt Company, the record can speak for itself; and, second, that there is nothing in the record to substantiate that question. It came up yesterday, and I gave the same argument as to that.

Trial Examiner Purcell: Just state your grounds. Off the record, Mr. Reporter.

(Discussion off the record.)

Trial Examiner Purcell: On the record. After discussion off the record, and argument between counsel, the objection of the attorney for the respondent is sustained. Proceed.

Q. (By Mr. Haslett.) Mr. Keefe, would it be desirable, from your standpoint, if your company had another five cent rebate on its purchases of Morton salt, paying $1.35 a case for it instead of $1.40?

A. Yes, I think we would like to get everything as cheap as we can.

3261 Q. Do you—

A. (Continuing.) You mean desirable to me, of course, do you not?

Q. That is right.

A. Yes, sir.

Q. Do you know whether any of your competitors receive an additional discount from the Morton Salt Company of five cents?

A. No, sir.

Q. You do not?

A. I might add about that additional five cents. I wouldn't want it to assume such proportions as would force us to reduce our prices because then it wouldn't do us any good.

Q. Then it could—

A. (Interposing.) If he sold me salt at one dollar—

Trial Examiner Purcell: Just a moment. Let counsel finish his question. Let us observe the proprieties of the hearing.

Q. (By Mr. Haslett.) If one of your competitors did receive a $1.35 price, and used that extra nickel in order to lower his price, it would have a substantial effect on your business?

A. Not necessarily, because he lowers it up and down anyway, but that continual five cents—where is the stopping point? If he gets one, he may get another, and

3262 at some point it will break down and a catastrophe results.

Q. But, assuming that you were in the salt business only and that five cent price was used to force the resale price on Morton's blue package salt, that would have a substantial effect on your business, wouldn't it?

Mr. McBride: My usual objection?

Trial Examiner Purcell: Yes. The witness may answer the question.

A. If we were exclusively in the salt business? Of course, it is like the manufacturer of sugar; a manufacturer of sugar of the standard grades. He has got to be exactly the same as his competitors, but that is a far-fetched idea. He couldn't be in the salt business exclusively.

Q. I realize that, sir.

A. I would have to be competitive, of course.

Q. We only assume these facts, in order to give the Commission a picture of the salt business, because that is all we are interested in in this case. We are not interested in any other type of business except the salt business.

A. Of course, you understand, I do not object, but it is hard for me to picture and frame an answer, if I was in the salt business alone. I can't hardly get myself in that frame of mine.

Trial Examiner Purcell: Off the record.

(Discussion off the record.)

3263 Trial Examiner Purcell: On the record.

Q. (By Mr. Haslett.) Are you satisfied with the ten cent rebate that you get from the Morton Salt Company?

A. Yes, sir.

Q. Would you be more satisfied if you got fifteen cents as a rebate?

A. Well, as I say, the dividing line will come in there some place; if the rebates get too large, they will break down the price structure, and then we would lose the benefit of the dime rebate.

Q. Don't you get a discount on other types of salt from the Morton Salt Company?

A. I don't think so. I believe on the flat package, there is a nickel allowance, but that is normal, I assume.

Q. Do you purchase fifty thousand dollars worth of table salt from the Morton Salt Company during any twelve consecutive months' period?

A. Fifty thousand dollars worth?

Q. Yes, sir.

A. No, sir.

Q. But you just do get the five thousand cases. You get just above that?

A. That would run around ten thousand dollars a year.

Q. Ten thousand dollars a year?

A. Yes. The Morton's salt that I buy.

3264 Q. You say you do get an additional five cents on the package salt?

A. I don't know whether it is additional or not. I noticed on the invoice that it was billed at ninety less five. I think it is a regular allowance.

Q. What is it for, sir?

A. It is just a method of adjusting prices. It is not a rebate. It just comes right off the invoice.

Q. You do not know what you get it for?

A. No, sir.

Q. You do not?

A. I pay no attention to it.

Q. Would you pay any attention to it, if you didn't get it, Mr. Keefe?

A. Well, some times we don't. They sell the stuff at ninety, with a special allowance of five cents, and at other times there is no such allowance.

Q. I believe you testified that the ten cents that you do get from the Morton Salt Company is put in your profit and loss?

A. Well, yes. It is about the only place you can put it.

Q. It goes in the profits, doesn't it?

A. Yes, but we have just one account called profit and loss. It goes on the profit side of the profit and loss account.

3265 Q. What do you do with it then, sir?

A. Well, I kind of spend it, and declare a dividend with it, and things like that.

Q. You have no particular purpose for it?

A. No, sir. It is just a part of the profits of the business.

Q. Is it in the same column with other rebates that you get from other companies?

A. Yes.

Mr. McBride: Mr. Examiner, I object to the question and move to strike the answer, as to the inference of rebates from other companies, for the reasons already presented on the same question.

Trial Examiner Purcell: Off the record, please, Mr. Reporter.

(Discussion off the record.)

Trial Examiner Purcell: On the record. The objection is sustained, and the motion to strike is granted.

Q. (By Mr. Haslett) Mr. Keefe, who advised you that you could get this ten cent rebate from the Morton Salt Company?

A. I guess it was their local man. I do not distinctly recall.

Q. Did he talk with you about it?

A. I think so. I am not clear on that point, as to whether he told me or told my assistant.

3266 Q. Had you heard of it prior to that time?

A. No, sir.

Q. Mr. Keefe, you testified that if you were high on salt, that it would't have any effect on your business. Do you recall testifying to that?

A. Yes, sir.

Q. As I pointed out to you before, this complaint deals only with salt.

A. Yes, sir.

Q. If you were high on salt and you were in the salt business only, it would have some effect on your business, would it not?

A. I assume so. Of course, I have never been in the salt business exclusively, and I can't be sure as to what effect that would have, sir.

Q. I am asking you to assume that fact.

A. I assume that if I were high on salt, and sold nothing but salt, it would have some effect; that I would have some difficulty.

Q. In answer to your question—in answer to the question of Mr. McBride, you answered that question based on the fact that you were in the wholesale business?

A. Yes, and I am high on a lot of things, and I am low on a lot of things, and, as I say, it has no specific effect on our business, being high on this and low on that.

3267 Q. Assuming you were high on everything?

A. Our salesmen say that I am.

Q. Well, are you really above all of your competitors on everything?

A. I don't see how we could be.

Q. I believe you testified you weren't?

A. I don't believe we are; but, then, of course, to be absolutely definite, we would have to get them around here and get our own branches to check it. It is pretty hard

to check up three or four places. I am sure we are not high on everything.

Q. I will ask you to assume that you are twenty per cent higher on your resale prices on every commodity that you sell than your nearest competitor—

A. Twenty percent is lots of percentage.

Q. Would that in any way affect your business?

A. I think it would, yes, sir.

Q. You wouldn't be in business very long, would you, Mr. Keefe?

A. Not long, no, sir.

Q. But the fact that you might be high on one item and low on 1999 other items, that one item, of course, would not have a substantial effect on your whole business?

A. No, it wouldn't have any effect on it. We could still be low on it, and figure we could average about the same.

3268 Q. Is the handling of salt an important element of your business?

A. Oh, yes.

Q. You have a number of customers wanting to buy salt from you?

A. Yes; all of them want salt at some time or another. Not big in volume, but there are some.

Q. Is the Morton Salt Company your principal source of supply on salt?

A. Yes, I think so.

Q. It is?

A. We buy from other salt houses, though. I think it would be more from them.

Q. Do you get any discounts from the other salt companies, Mr. Keefe?

Mr. McBride: I object for the reasons already given, Mr. Examiner.

Trial Examiner Purcell: The objection is sustained.

Q. (By Mr. Haslett.) Do you handle any International Salt Company salt business?

A. International?

Q. Yes.

A. Sterling; I think that is. That is it.

Q. What is the price you pay for Sterling salt,

3269 per case?

Mr. McBride: Mr. Examiner; I think I will object to the question as to what he pays for it. I don't see that that has any bearing in this case.

Trial Examiner Purcell: The objection is overruled.

A. It looks now—I do not recall, but this cost sheet says it cost $1.00 and $1.08 on the 36, one and one-half pound Sterling flat package. That is the evaporated salt.

Q. Is that the same sized package as the Morton's round package salt?

A. I think Morton's is 26 ounces. No; it looks like that would be 24 against Morton's 26. Maybe they could tell you how much there is in Morton's. I have it twenty-six. It is two ounces less.

Q. It is two ounces less?

A. Yes, sir.

Q. There are more packages to a case?

A. There are 36 to a case.

Q. And how many to Morton's?

A. Twenty-four. Morton's, you see is about seventy-five cents a dozen. This other one would be thirty-six cents a dozen.

Q. Just about half?

A. Yes, sir. Of course it is not as fine a salt as
3270 Morton's, you understand.

Q. I understand.

A. Of course the Morton Salt Company told me that.

Mr. Haslett: I think that is all, Mr. Keefe. Thank you.

Trial Examiner Purcell: Any redirect examination, Mr. McBride?

Mr. McBride: Yes, sir.

Redirect Examination by Mr. McBride.

Q. I think you stated in answer to one of Mr. Haslett's questions that you had never been in the wholesale salt business alone?

A. No, sir; that is true.

Q. Have you ever met any wholesalers that have handled nothing but salt in the many years of your wholesale experience?

A. No, sir, I have not.

Q. Not changing your treatment of salt or any other item in the wholesale line, that is, taking into consideration your whole business?

A. Yes, sir.

Q. Is that right?

A. It must necessarily be so. I don't recall it, but that is true.

3271 Q. There is no way that you, as a wholesale grocer, are able to isolate salt items alone, and give that some special treatment?

A. No, sir.

Q. I think you also testified, Mr. Keefe, in answer to one of Mr. Haslett's questions, that if a competitor of yours was paying $1.40 a case for Morton's blue package salt, while you were paying $1.50 a case, and both of you were selling it at $1.75 a case, that he would make ten cents more profit than you would. Did I quote you correctly?

A. That is true, of course.

Q. Let me assume this Morton's—in order to do this, let us take an easy example. Supposing during the month of February, 1942, the competitor who paid $1.40 a case and sold it at $1.75, sold ten cases of Morton's blue package salt, and during that same month, you paying $1.50 and selling at $1.75, sold fifty cases of Morton's blue package salt, five times as much; will you state which, in your opinion, yourself or the competitor would make the most profit, Mr. Keefe?

A. I would make the most profit; naturally, five times as much.

Q. By reason of the turn-over?

A. Yes, sir.

Q. From your experience in the wholesale busi-
3272 ness, would you think that the overhead or operating cost of all wholesalers are the same?

A. I know from national figures they are not the same.

Q. Would it be possible, then, having reference again to our same example, Mr. Keefe, for the man buying at $1.40 and selling at $1.75 would have a higher overhead than you do, buying at $1.50 and selling at $1.75?

A. That is entirely possible, yes, sir.

Q. Then, would it be possible, still referring to that same example on the blue package salt, and we will take February, 1942, again, if each of you sold fifty cases, he from $1.40 to $1.75 spread, and you at the $1.50 to $1.75 spread, taking into consideration the overhead factor, would it still be possible for you to make more profit than your competitor, Mr. Keefe?

A. Yes, sir, that is true. We have houses with high operating expenses and they make more percentage of profit, but would make less money.

Q. So that there is no way of telling by the purchase price or resale price alone, what the respective profits are unless you take into consideration overhead and volume?

A. That is true. What we have to find out is the intangible.

Mr. McBride: I have no further questions, Mr. Examiner.

3273 Trial Examiner Purcell: Any recross examination, Mr. Haslett?

Mr. Haslett: Yes, sir.

Recross Examination by Mr. Haslett.

Q. I have just a few questions. You say you know—if I am quoting you correctly—that the operating expenses of other wholesalers are much higher?

A. Yes, sir.

Q. How do you know that?

A. At this time, I could not give you the figures, but the OPA for instances is trying to determine the percentage of mark-up on canned goods, and they sent out a questionnaire, and they find that the wholesalers' expenses vary materially in different parts of the country.

Q. Did you see the sheets?

A. I have seen comments on them at one time or another. That is a very burning subject now. Our mark-up is 13.5 per cent, which is satisfactory, but the percentages are not uniform over the country, and there is a turmoil.

Q. You say you saw those sheets?

A. Only comments on them in the trade papers.

Q. But that is where you got the information?

A. Yes, sir.

Q. From the trade papers?

A. Yes, sir.

3274 Q. You do not know where they got the information?

A. Well, the department of something or other is getting out statistics.

Q. You base that statement upon what you have read in the newspapers?

A. Trade papers, not in the newspapers, and the OPA prices vary with the wholesalers.

Q. Mr. Keefe, you testified that if one of your com-

petitors were paying $1.40 for salt and selling it at $1.&5 and you were paying $1.50 and selling for $1.75, and that competitor sold ten cases—

A. Yes, sir.

Q. (Continuing.) —in one month, and you sold fifty cases, that you would make more money than your competitor?

A. Yes, sir.

Q. Well, that is nothing but arithmetic, isn't it, Mr. Keefe?

A. That is what I thought. If I did it mentally correct, that is arithmetic.

Q. But if your competitor sold the same amount as you sold during the month, fifty cases, and he was paying $1.40 a case for it, he would be making ten cents more than you would?

A. If his expenses were the same as mine or ours, of course, that might be true.

3275 Q. But he would have the ten cent margin that you didn't have?

A. Yes, sir, if he gets it ten cents cheaper and sells at the same price, he gets that much more.

Q. If his operating expenses would take up that ten cents, he would still be making the same profit?

A. If the operating expenses took up the ten cents, he would make the same; that is right.

Q. That is correct?

A. Yes, sir.

Q. Is the C. D. Kenny Company one of your competitors in Tampa?

A. I do not believe they have a store there.

Q. Do you meet their competition in any area where you operate?

A. No, sir.

Q. You do not go as far as Thomasville, Georgia, do you, Mr. Keefe?

A. No, we stay in the south.

Q. You have a place over at Lakeland, Florida, do you not, Mr. Keefe?

A. That is only thirty miles.

Q. From Tampa?

A. From Tampa, yes, sir.

Q. Hill Brothers operate there?

3276 A. Yes, sir—No, they are in Miami, I think. That is the one you refer to.

Q. They used to operate in Tampa?

A. No, sir. We would meet them along the lake there, but they never did come into Tampa territory.

Q. You do meet them?

A. Competitively we would meet them along the lake. We meet Miami. They come over as far as that, and we go down as far as that lake.

Trial Examiner Purcell: What lake is that, Mr. Keefe?

The Witness: Okeechobee. Clewiston, and that strip of muck land around there.

Trial Examiner Purcell: I understand. I wanted the record to show.

The Witness: Yes, sir.

Mr. Haslett: I think that is all, Mr. Keefe.

Mr. McBride: I have no further questions of Mr. Keefe.

Trial Examiner Purcell: You are excused, Mr. Keefe. Thank you.

3278 Mr. McBride: Mr. Examiner, I call as the next witness on behalf of the respondent, Mr. W. E. Law.

W. E. LAW, was thereupon called as a witness for the respondent, and, having been first duly sworn, testified as follows:

Direct Examination by Mr. McBride.

Q. Mr. Law, will you state your name and address for the record, please?

A. W. E. Law.

Q. And your address?

A. 4351 McGirts Boulevard.

Q. Jacksonville, Florida?

A. Yes, sir.

Q. And what is your occupation?

A. Sales manager for the Great Atlantic & Pacific Tea Company, Jacksonville unit.

Q. How long have you held that position?

A. Approximately four years.

3279 Q. Were you associated with the Great Atlantic & Pacific Tea Company prior to that time?

A. Yes, sir.

Q. In what capacity?

A. Assistant sales manager.
Q. Of the Jacksonville unit?
A. Yes, sir.
Q. And what was your position prior to that time?
A. My position prior to that time?
Q. Prior to being assistant sales manager?
A. That was the position I went there to.
Q. When did you join the Great Atlantic & Pacific Tea Company?
A. April, 1930.
Q. What was your occupation prior to that time?
A. Accounting work; Cudahy Packing Company.
Q. You have been continuously employed by the Great Atlantic & Pacific Tea Company from 1930 to date in those two capacities, Mr. Law?
A. Yes, sir.
Q. Is that correct?
A. That is correct.
Q. You refer to the Jacksonville Unit of the Great Atlantic & Pacific Tea Company. Will you describe what you mean by that, Mr. Law?
3280 A. I mean the territory or area and stores supplied out of the Jacksonville warehouse.
Q. And can you describe that geographically, if you will, please.
A. The State of Florida, the southern part of Georgia, the east coast of Georgia up to and including Charleston, South Carolina.
Q. Within that territory that you have described, how many stores do you have altogether?
A. 188?
Q. 188?
A. Yes, sir.
Q. Does that include various types of stores or are they all the same types of stores?
A. They include the various types of stores.
Q. Will you describe what those types are?
A. We have what we call service stores. It is a small store, in which the customer is served by a clerk, or the manager, and generally located in the residential neighborhoods. We have what we call the super-markets, which is a large self-service type of store.
Q. Referring now to the City of Jacksonville, or the metropolitan area of Jacksonville, will you describe the

number of each type of store that you have in that particular territory?

3281 A. We have approximately eighteen service stores and four super-markets.

Q. When were the super-markets first opened in Jacksonville, Mr. Law?

A. In 1940, I believe, or 1941. I do not recall which date it was, in the City of Jacksonville.

Q. That is what I am referring to.

A. Yes, sir.

Q. And all four stores have been operated since late in 1940, or the early part of 1941; all of those super-stores, Mr. Law?

A. Yes, sir.

Q. Does your company operate any stores in Miami?

A. It does.

Q. Will you describe the number and type of stores there?

A. We have in Miami proper ten stores; eight of them super-markets and two of them service stores.

Q. And how long have you had super-markets in Miami?

A. Since September, 1939.

Q. Now, with respect to Tampa, will you state the number of stores, and each type, if any, that your company operates in Tampa?

A. We have approximately eighteen service stores and two super-markets in Tampa.

Q. And when were the super-markets opened in Tampa?

3282 A. The super-markets in Tampa, were opened in 1941; some time during 1941.

Q. Now, with respect to Tallahassee. Does the Great Atlantic & Pacific Tea Company operate any stores in that city, Mr. Law?

A. It does.

Q. Will you describe the number and type there?

A. Two stores, both of them service stores.

Q. No super-markets?

A. No super-markets.

Q. As sales manager of the Jacksonville unit of the Great Atlantic & Pacific Tea Company, Mr. Law, will you describe what your duties are?

A. Establish retail prices for the stores; in charge of the advertising; in charge of licenses.

Trial Examiner Purcell: In charge of what?

The Witness: In charge of licenses; retail prices, advertising.

Q. (By Mr. McBride.) Do you do any buying?

A. I do not.

Q. Does anybody in your department do any of the buying, Mr. Law?

A. No, sir.

Q. Will you describe, Mr. Law, what the—strike that, please. Does the Great Atlantic & Pacific Tea Com-
3283 pany in the Jacksonville unit handle Morton's blue package salt—referring now to the round blue package, free running and iodized salt?

A. We do.

Q. How long has that salt been handled, if you know?

A. Ever since I have been with the company. I do not know how long before that time.

Q. But it has been handled ever since 1930?

A. Yes, sir.

Q. Do you know what the price of the Morton's blue package salt is in the service stores in Jacksonville, referring now to only the metropolitan area?

A. Yes, sir.

Q. What are they?

A. Ten cents a package.

Q. And what is the price in the super-markets in Jacksonville?

A. Eight cents a package, two for fifteen cents.

Q. How long has the ten cents per package price been in effect in the service stores, if you know?

A. It has been in effect, I know, since 1930.

Q. There has been no change in the price since that date?

A. There has been no change.

Q. How long has the eight cents two for fifteen cent price been in effect in the super-stores in the Jack-
3284 sonville area?

A. Since the super-markets have been operating.

Q. Has there been any change in the price since the opening of the stores, on the blue package?

A. There has not.

Q. Referring now to Miami, can you tell me what the prices are in the super-markets and the service stores in Miami, Mr. Law?

A. They are ten cents a package in the service stores; eight cents, or two for fifteen cents in the super-markets.

Q. And would the time element, so far as continuity of prices, be the same there as in the Jacksonville area?

A. Yes, sir.

Q. Are the prices the same in the two types of stores, or different in Tampa?

A. They are the same in the two types of stores in Tampa.

Q. And continuity of prices is the same as far as the time element is concerned?

A. Yes, sir.

Q. Is the price the same in the service stores, ten cents in Tallahassee?

A. Yes, sir.

Q. And that has been in effect there ever since 1930?

A. Yes, sir.

Q. In setting your prices on Morton's blue pack-
3285 age salt, do you know what the cost base is that you use, Mr. Law?

A. Yes, I do.

Q. Will you state what that is?

A. $1.40 a carton at the present time.

Q. That is per case of two dozen round packages?

A. Yes, sir.

Q. Is that correct?

A. That is right.

Q. Where do you receive the information as to the cost?

A. From our purchasing department.

Q. They supplied you the figure of $1.40 a case, is that correct?

A. That is correct.

Q. And from that figure, you set or review the prices on Morton Blue package salt?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. Is the same procedure followed so far as your cost element is concerned with respect to all of the commodities that you handle and fix the prices on?

A. It does.

Mr. McBride: You may cross examine.

Cross-Examination by Mr. Haslett.

3286 Q. The name is Law?
A. Yes, sir, that is right.
Q. L-a-w?
A. Yes, sir.
Q. Do you know whether or not your company gets any discounts, rebates or allowances from the Morton Salt Company?
A. No, I do not. That is not in my line at all, and unless I would make an effort to find out, I would not know about that.
Q. You have made no effort to find out?
A. No, I have not.
Q. Did you set the price of ten cents on the round package salt in the regular stores in the Jacksonville area?
A. No, sir.
Q. Who set it?
A. I believe Mr. Carlton set it, but I can't verify it, because it was set when I came to work for the company.
Q. Who is Mr. Carlton?
A. Mr. Carlton is my predecessor in this position.
Q. Where is he now?
A. Where is he now?
Q. Yes, sir.
A. He is sitting right behind me.
Q. And did Mr. Carlton also set the price of eight cents in the super-markets?
3287 A. No, sir.
Q. Who set that?
A. I did.
Q. What factors did you take into consideration in arriving at that figure?
A. Our gross profit situation and the differential in retail prices that we maintain between our service stores and our super-markets.
Q. Well, how did you arrive at the differential of two cents between the service stores and the super-markets?
A. There was no special way of arriving at it. I just went through the records and established the price for the super-markets at the time we opened them.
Q. It was just an estimate or a guess?
A. You can't say it was a guess, because it was based

on the cost, in that I made a satisfactory gross profit to the company, according to the company policy.

Q. And the differential of two cents represents then a savings in the servicing between the super and the regular stores?

A. It represents a differential in price between the super-markets and the service stores, a saving to the customer.

Q. A saving to the customer?

A. Yes, sir.

Q. And how was that saving—how was that ar-
3288 rived at? Did you make an actual survey of the actual saving to the customers between the two types of stores?

A. No. There was no actual survey made. In arriving at the retail prices for our super-market, we purposely established them at a differential under the service store prices, taking into consideration what we term as a good retail.

Trial Examiner Purcell: Term what?

A. As a good retail. That is, we think there are bad prices and good prices, and we think that eight cents, or two for fifteen cents is a good price that will sell more merchandise than nine cents or seven cents would sell.

Q. (By Mr. Haslett.) Then it wasn't based on any actual savings? It was based on your best judgment?

A. That is right.

Q. Is the same true as to Miami, Tampa and Tallahassee?

A. Yes, sir.

Q. You don't have any super-markets in Tampa?

A. We do not.

Q. When did you open the super-markets in Jacksonville?

A. It was opened the latter part of 1940, or the early part of 1941. I do not remember the exact date. I am sorry.

Q. Either the latter part of 1940 or the early part of 1941?

A. Yes, sir.

3289 Q. And up to that time you had only the regular stores here?

A. That is correct.

Q. That is true also of Miami and Tampa?

A. No, we opened the super-market in Miami in September, 1931.

Q. And the eight cents was established at that time in those stores?

A. Yes, sir.

Q. And how about Tampa?

A. They were opened in Tampa in 1940 or 1941.

Q. Does competition have anything to do with the fact that these prices were put into effect?

A. No, sir.

Q. You didn't consider competition at all?

A. No, sir.

Q. Are you interested in competition?

A. Well, I think that we are as much interested in competition as they are in us.

Q. You are interested in being in line with your competitor, aren't you, on prices?

A. As much as possible.

Q. As much as possible?

A. Yes, sir.

Q. When a competitor gets below you on certain 3290 items, why, you lower your price to meet it?

A. No, sir.

Q. Have you ever done that?

A. I do not remember of a single time that we have done that.

Q. You never lower your price to meet the price of your competitor?

A. We take all factors into consideration, and if we can lower our price and still operate under the company policy we will do it, but, in other words, we don't keep a record of our competitors' prices, and we do not set our prices by our competitors.

Q. But the prices of competitors are taken into consideration in arriving at your retail prices?

A. No, sir.

Q. At no time?

A. On a new item perhaps, yes.

Q. On a new item?

A. Yes, sir.

Q. It would be taken into consideration?

A. Yes, sir.

Q. And do you know of any time, on an item that had been stocked by your company, that you had taken into

consideration the price of the competitor in arriving at your retail price?

3291 Mr. McBride: Read that question, please, Mr. Reporter.

(The question was read.)

Mr. McBride: All right.

A. I do not know of any time that we have made it a point to check our competitor's prices before establishing our retail prices.

Q. (By Mr. Haslett.) You know of no time?

A. That is right.

Q. Isn't it the policy of your company to sell the products at the lowest possible price to the consuming public?

Mr. McBride: If the Master please, I will object to that. I think the policy of the Great Atlantic & Pacific Tea Company is not in issue here or relevant to the issues here.

Trial Examiner Purcell: I will overrule the objection, and let the witness answer the question. It may not be in issue, but it might be pertinent. You may answer the question.

A. It is the policy of our company to sell merchandise at a fair, what we think is a fair price, and that does not necessarily mean the lowest price that we could sell it for, sir.

Q. (By Mr. Haslett.) You say that might not be the lowest price?

3292 A. It doesn't necessarily mean the lowest price that we could sell it for.

Q. Who advised you that the cost of Morton's round package salt to your company per case was $1.40?

A. Our purchasing department.

Q. Your purchasing department?

A. Yes, sir.

Q. Where is that located, sir?

A. In the same office my depatrment is located.

Q. I believe you testified that you set the resale prices on the various items that are sold to the consuming public through your outlets?

A. Yes, sir.

Q. If an opportunity presented itself for you to change the price of Morton's round package salt in your regular stores, would the cost of $1.40 that you now know, be taken into consideration in arriving at the new price?

A. I have lost a part of the question.

Trial Examiner Purcell: Read the question, Mr. Reporter.

(The question was read.)

A. I do not quite understand what you mean by that question, because the cost of Morton's salt has been that price, or very close to it for a number of years, and we have not changed our retail.

3293 Q. Well, I am asking you to assume, as a state of facts, that you were going to change your resale price of Morton's round package salt. Now, I will ask you if you can answer the question under that?

A. I would check the cost.

Q. So, the cost would be an important factor in arriving at your resale price?

A. It would be a factor, yes, sir.

Q. Then, if the Morton's round package salt was increased in price to your company to $1.50 a case, and you had an occasion to change the price in your various outlets, you would take into consideration the $1.50 price in arriving at the resale price to the consuming public?

A. Yes, if there was an occasion to change the price.

Q. Do you know the price at which the Morton Salt Company charges for the round package salt per case to any of your competitors?

A. No, I do not.

Q. Do you know what the list price is per case for the round package salt?

A. I do not.

Q. You do not know whether you are getting a better price than that list price, or a higher price?

A. No, sir, I do not.

Mr. Haslett: I think that is all, sir.

3294 *Redirect Examination by Mr. McBride.*

Q. Mr. Law?

A. Yes, sir.

Q. If your purchasing department advised you tomorrow that the cost of Morton's blue package salt was $1.50, would you make any change in the price in the supermarkets, the retail prices?

A. No, sir.

Q. Would you make any change in the price in the service stores?

A. No, sir.

Q. Will you please explain why you would not make any change?

A. Because we would be making a satisfactory gross profit if the cost were $1.50 per case. There are several factors taken into consideration in establishing retail prices on merchandise and salt is not, in our opinion a volume item or a fast-moving item. It is not a trade item, in other words, and we have established a retail which is a satisfactory retail on that item, and we wouldn't want to change that retail unless it were necessary.

Q. And the mere fact that your purchasing department advised you that the cost was $1.50, would not make you conclude it was necessary to change either of those 3295 retail prices?

A. No, sir.

Mr. McBride: I have no further questions.

Recross Examination by Mr. Haslett.

Q. Mr. Law, is salt a necessary item to carry in stock in your various outlets?

A. Yes, sir.

Q. People buy salt, don't they?

A. Yes, sir.

Q. What would be your answer to Mr. McBride's question if you were advised that the cost of Morton's salt had been increased to $1.60 per case?

A. I would have to check my gross profit on that because I could tell you. In other words, I am a little slow in figuring in my head. I would have to check it, but I don't think there would be any change at $1.60.

Q. Would it change it any if it was $1.70 a case?

A. It probably would.

Q. It would change the resale price then?

A. In the super-markets. Not in the service stores.

Q. That is practically the ceiling price on that round package salt; that is, the advertised price, ten cents, is it not?

A. To tell you the truth, I have never seen it ad-
3296 vertised by the Morton Salt Company, if that is what you mean, but it is more or less of a standard price, I believe.

Q. You have never seen it advertised by the Morton Salt Company?

A. I have never seen the price advertised by the Morton Salt Company.

Q. Do you handle any other items processed by the Morton Salt Company in your various stores?

A. Not that I know of.

Q. That is the only item?

A. That is the only one.

Mr. Haslett: I think that will be all, Mr. Law. Thank you.

Redirect Examination by Mr. McBride.

Q. Mr. Law, I believe you stated, so I can understand you correctly, that if your purchasing department advised you that the cost of Morton's blue package salt was $1.75 a case that that might cause you to change the price in the super-markets, but not in the service stores?

A. Yes, sir.

Q. Is that correct?

A. That is correct.

Q. Did I understand your testimony correctly on that?

A. Yes, sir.

3297 Q. Do you handle any other salt items besides the Morton blue package salt?

A. Yes, sir.

Q. Will you describe what they are by brand and type of salt or size of package?

A. We handle the three pound round package, four-season salt, and the pound and a half square box, round. I believe that is all except the ice cream salt. I didn't mention that.

Q. Just the table salt? That is all I want.

A. Yes, sir.

Q. What is the retail price in Jacksonville in your several stores, your service stores and your super-markets on the items that you have just described, exclusive of the ice cream salt, Mr. Law?

A. On the one and a half pound package, the retail price is—I haven't checked that price lately. I do not recall what it is.

Q. Do you recall what it is on the other items?

A. It is ten cents a box for the three pound four-season salt in the service stores, and nine cents, or two for eighteen cents in the super-markets.

Q. Do you recall with respect to the one and one-half pound squares whether or not the price is less than that on Morton's Blue Package salt?

3298 A. Much less than that.

Q. Much less than that?

A. Yes, sir.

Q. Morton's blue package would have the highest retail price of any of your table salts, I presume, in both your super-markets and your service stores?

A. By comparison in size, yes, it would.

Q. In terms of size?

A. Yes, sir.

Q. Are those table salt items all carried normally in one section in your stores or are they scattered at different intervals throughout the stores?

A. They are carried in one section.

Trial Examiner Purcell: Off the record, Mr. Reporter.

(Discussion off the record.)

Trial Examiner Purcell: On the record. Any further recross?

Mr. Haslett: Did he answer the question, Mr. Reporter?

(The answer was read.)

Mr. Haslett: No, no recross examination.

Trial Examiner Purcell: We will take a five minute recess.

(A short recess was had.)

3299 Trial Examiner Purcell: Proceed, please.

Mr. McBride: Mr. Examiner, I will call as the next witness on behalf of the respondent, Mr. W. A. Carlton.

W. A. CARLTON, was thereupon called as a witness for the Respondent, and, having been first duly sworn, testified as follows:

Direct Examination by Mr. McBride.

Q. Mr. Carlton, will you state your name and address for the record, please?

A. W. A. Carlton. 4639 French Avenue, Jacksonville, Florida.

Q. What is your occupation, Mr. Carlton?

A. Division sales director for the southern division, Great Atlantic & Pacific Tea Company.

Q. How long have you held that position?
A. Four years.
Q. Where is your office located?
A. Jacksonville.
Q. What position did you hold with the Great Atlantic & Pacific Tea Company prior to your present position?
A. Sales manager of the Jacksonville unit.
Q. Is that the same position Mr. Law now holds?
A. That is right.
Q. How long did you hold that position?
3300 A. About thirteen years.
Q. Were you connected with the Great Atlantic & Pacific Tea Company prior to that time?
A. Since November, 1922.
Q. And what position were you in from 1922 until you became sales manager of the Jacksonville unit?
A. Assistant sales manager at Atlanta, Georgia.
Q. Will you describe, the geographical boundaries of the southern region?
A. Southern division.
Q. Southern division.
A. It takes in eleven states. Shall I name those states, sir?
Q. If you will, please.
A. Florida, Georgia, South Carolina, North Carolina, half of Tennessee—I said eleven states, there are not eleven. Mississippi, Alabama, Louisiana, Texas, Oklahoma and Arkansas.
Q. What are your duties, Mr. Carlton, as division sales manager?
A. I direct the sales and advertising policies of the division.
Q. In that connection, do you have under your jurisdiction the various sales managers and assistant sales managers of the units?
3301 A. That is right.
Q. Mr. Law testified just in advance of you that the Morton blue package salt sold for ten cents a case in the service stores?
Trial Examiner Purcell: Ten cents a package.
Q. (Continuing) —at ten cents a case in the service stores in the Jacksonville unit, and that that price had been established at least since 1930. Did you establish that price, or do you know who did establish that price, Mr. Carlton?

A. I established it.

Q. And when was that established, if you recall?

A. As I recall, some time in the early part of 1929.

Q. What factors did you take into consideration, Mr. Carlton, in establishing that price?

A. Well, now, there are several factors that we take into consideration in establishing a retail price. Of course, the cost is taken into consideration and we figure the amount of gross profit that we should make. In arriving at the amount of gross profit we should make, there are several factors to be taken into consideration, one of those the turn-over of the particular item that we are pricing. It stands to reason that we can operate on a lower mark-up on, we will say, sugar, where our turn-over will be
3302 over forty or fifty times a year, than we can on, to take an extreme case, scrub brushes, where we only turn it over twice a year. One factor is turn-over. The length of time we have to carry the merchandise on our shelves before we can turn it into money. And, another factor is the freight on the commodity. Take in the case of salt, the transportation per pound would be a great deal more than on corn flakes. Therefore we have to take into consideration the freight factor, and various other factors of that kind are taken into consideration in establishing a retail price. Now, there is no set rule by which you can go. The sales manager in establishing retail prices just has to know all of these factors on the various commodities that he is pricing. It is more or less of an instinct or something he learns through many years of experience.

Mr. Haslett: Mr. Examiner, I move to strike the answer to the last question as not responsive to the question. He asked him what factors he had taken into consideration in setting the retail prices on salt in the regular stores.

Mr. McBride: The witness answered what the factors were, and how they were taken into consideration.

Trial Examiner Purcell: Off the record.

(Discussion off the record.)

Trial Examiner Purcell: On the record. The motion of counsel to strike is granted on the ground of un-
3303 responsiveness to the question.

Mr. McBride: I want an exception and also the right of appeal.

Trial Examiner Purcell: Yes, sir.

Q. (By Mr. McBride.) Mr. Carlton, do you do any buying, or did you do any buying while you were sales manager of the Jacksonville unit?

A. No, sir.

Q. Have you done any buying since you were division manager?

A. No, sir.

Q. Where did you receive the costs on the various commodities on which you set your prices?

A. Those costs are supplied by the purchasing department.

Q. And then you set the retail prices on all commodities, predicated on the cost supplied and whatever other factors were taken into consideration?

A. Yes, sir.

Q. Is that correct?

A. That is correct.

Q. That same procedure was followed with respect to Morton's blue package salt?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. Now, in order to arrive at factors that were 3304 taken into consideration will you tell me, Mr. Carlton, what factors were taken into consideration generally in the pricing policy followed by you in setting the retail prices on the various commodities handled by your Jacksonville unit during the period that you were the sales manager of this unit?

Trial Examiner Purcell: Off the record, please, Mr. Reporter.

(Discussion off the record.)

Trial Examiner Purcell: On the record.

Mr. McBride: Mr. Haslett, it is stipulated by and between counsel for the Commission and counsel for the respondent that the answer to the question just propounded to the witness, Mr. Carlton, would be the answer which he gave to my previous question some six or seven questions back regarding the factors which he took into consideration in arriving at or fixing the ten cent price on Morton's blue package salt, and to which your objection was sustained as being non-responsive to that particular question, and that that answer will stand stricken as to that previous question and will stand as the witness answer to the present question.

Mr. Haslett: That is correct.

Trial Examiner Purcell: It is so ordered. Off the record.

3305 (Discussion off the record.)

Trial Examiner Purcell: On the record.

Q. (By Mr. McBride.) Mr. Carlton, you have had the last question read to you and you have heard the stipulation between counsel in an effort to re-arrange the record. I wish you to state whether or not the stipulation is correct that your previous answer to the previous question would be the answer which you would give in answer to the current question?

The Witness: May I hear my answer read?

(The answer was read.)

The Witness: It would be the same answer, with one exception.

Q. (By Mr. McBride.) And what would that exception be?

A. Except that instead of making a comparison of freight on a pound basis, it should be made on a dollar sales basis.

Q. The freight would be the same regardless of the commodity?

A. The freight would be the same regardless of the commodity, taking out a few exceptions where the tariff makes a difference in the classification.

Q. You have described the general factors, Mr. Carlton, which were considered by you as the sales manager. Were those same factors applied in arriving at the ten cent price on Morton's blue package salt in the service stores?

3306 A. Yes, sir.

Q. Would those same factors be used in reviewing that ten cent price in the event it ever came up for consideration as to any change in price?

A. Yes, sir.

Q. During the period—strike that, please. At the time that you set the price of ten cents in the service stores, do you remember what cost basis was furnished you by the purchasing department?

A. I do not recall that far back.

Q. If the cost basis furnished you had been $1.50, would the price have been ten cents in the stores determined on the basis of those factors, or some other price?

A. That would very probably have been ten cents.

Q. If you were called upon—strike that, please. In connection with your general sales duties for the area which you have described under your present jurisdiction, is a part of your duties generally to supervise the prices on the various commodities in the various type stores in consultation with your unit sales managers?

A. Only as to the matter of policy. We have certain defined policies we have taken into consideration in establishing retail prices.

Q. If you were now in the sales managership of the Jacksonville unit, and you were given a cost of $1.40
3307 per case on Morton's blue package salt, would you arrive at ten cents in the service stores as the retail price or at some other price?

A. I would arrive at the ten cent price, taking into consideration the same factors that I took into consideration in setting the ten cent retail in 1929.

Q. Supposing you were currently called upon to fix a retail price on Morton's blue package salt in the service stores and taking into consideration the same factors, but a cost furnished you by the purchasing department of $1.35 a case, what price would you arrive at for the service stores, Mr. Carlton?

A. Of course, there must be a limit beyond which you can not go in differentiation of prices, but at the $1.35 cost, I would say we would still price it at ten cents.

Q. But at the time your super-markets were opened here in the Jacksonville unit, and by that I mean the entire Jacksonville unit, did you have anything to do with the general policy of prices in the super-markets as compared to the prices in the service stores?

A. General policy, yes, but not specific commodities.

Q. In connection with the establishing of that general policy, did you consider with the various sales managers or with other officials, the differentiation in retail prices between the super-markets and service stores, refer-
3308 ring now to the general policy?

A. Yes, that was more or less a matter of company policy; yes, sir.

Q. Will you explain the general policy or the general factors which were used for—or which accounts for the differential between the prices in the super-markets and in the service stores.

A. Well, it is a rather long story.

Trial Examiner Purcell: Perhaps you could shorten it up, Mr. Carlton, with counsel's consent.

A. Briefly, it is this: We might say that volume is the answer. The regular service store—well, pardon me. May I change that. Let us put it this way. A super-market might be doing ten times the volume that a regular service store is doing. The super-market does not have any service to their customers other than putting the merchandise on the shelves and their take their baskets and go around and select what they want. Obviously, there is a definite saving there in labor or clerk hire. The super-market, by reason of its volume, has a much lower overhead. They pay the same state chain store taxes as a smaller unit, doing one-tenth the volume, and the rent on a percentage basis is much less, and on every other factor of overhead. Consequently, their expense rate is a great deal less. If the customers want the service that he
3309 gets in a service store, if she wants to be waited on, or wishes to call up on the telephone and have the merchandise delivered to her door, naturally she is going to pay more for it, because the overhead of that smaller store would be greater, but if she wishes to do her own purchasing and comes into the super-market, then she has the privilege of buying the merchandise at a lower price.

I hope that explains why it is possible to sell at lower prices in the super-market, by reason of higher volume and lower overhead.

Q. Do you know the retail price of Morton's blue package salt in the super-markets in the Jacksonville unit, Mr. Carlton?

A. I believe it is eight cents for a single package, or two packages for fifteen cents. However, I did not set that price.

Q. Have you examined your record recently with respect to whether or not that is the current price in the super-markets?

A. That was the price about a week ago when I had occasion to examine the records.

Q. Would the differential between the ten cent price in the service stores on the Morton's blue package salt, and the eight cent, two for fifteen cent price of Morton's blue package salt in the super-market be accounted for

entirely by the factors which you have just described
3310 as to the general policy on price differential between the super-markets and the service stores?

Mr. Haslett: I object to that. I think it is beyond this witness' knowledge to say that that differential in price would be a saving in the cost of operation.

Trial Examiner Purcell: I would like to have that question read.

(The question was read.)

Mr. McBride: It seems to me, Mr. Examiner, that is a perfectly fair question. The witness can state whether that is or is not true and whether there are other factors to be considered.

Trial Examiner Purcell: I think you are posing a pretty difficult question to the witness, but he may be able to answer it.

Mr. McBride: If I understand counsel's objection, it is to the competency of the witness to answer that question. It strikes me that the gentleman on the stand is perfectly competent to answer it.

Mr. Haslett: We can see if he is competent to answer that question or is not.

Mr. McBride: First, is that the basis of your objection?

Mr. Haslett: That is the basis of my objection.

3311 Trial Examiner Purcell: You may take the witness on voir dire.

Voir Dire Examination by Mr. Haslett.

Q. Mr. Carlton, have you made a study, an actual study of the savings in cost between the operations of the super-market and the regular stores?

A. Yes, sir.

Q. When did you make it?

A. We have those reports made up for us each week. It is a part now of the general operation.

Q. I am talking about a study made by you showing that the two cent differential in price is a saving in the cost of operating the regular stores as compared with the super-markets?

A. We can not state that by commodities, no, sir.

Q. You can not state that by commodities?

A. No, sir.

Q. Have you ever made any survey of that type, sir?

A. There have been surveys of this type made.
Q. When were they made?
A. Within the last twelve months.
Q. Did you make them?
A. No, sir. I had access to the figures, though, after they were made up.
3312 Q. Who made up those figures?
A. Our statistical department.
Q. Your statistical department?
A. Yes, sir.
Q. You saw those figures?
A. Yes, sir.
Q. Are the figures available?
A. They are available, yes, sir, but I do not have them with me.
Q. You say they aren't made as to the Morton Salt Company product known as the blue can?
A. My answer to your question was if I had made this survey. I had not as to commodities, but the statistical department has.
Q. Did your particular department that handles that particular work make it as to Morton's round package salt on the two-cent differential?
A. That statistical department has each individual commodity, and we had access to the figures.
Q. Did you see them?
A. Yes, sir.
Q. Did you see the figures as to Morton's round package salt?
A. I do not remember that particular commodity, but it was made on every item we handled in the store.
3313 Q. You do not recall seeing the round package figures, Mr. Carlton?
A. I do not remember seeing that specifically, no, sir.
Mr. Haslett: That is all.
Trial Examiner Purcell: Do you have anything further to say, Mr. McBride?
Mr. McBride: No questions. Counsel's questions will qualify the witness even further.
Trial Examiner Purcell: I can't agree with you. As a result of his examination on the voir dire, the objection of counsel for the Commission is sustained.
Mr. McBride: On what grounds, Mr. Examiner, if I may ask.

Trial Examiner Purcell: On the grounds as a result of the examination, as I stated. This witness has been asked to testify whether or not the two-cent differential is entirely the result of the saving in the operation of the cost of the super-market over the individual store. And the examination upon voir dire discloses that he doesn't know; that he never made a survey. He couldn't possibly be expected to know, as counsel for the Commission points out in his original objection. It could only be a case of conjecture.

Mr. McBride: If the Examiner please, in the first place that was not my question. In the second place, coun-

3314 sel examined this witness. He testified that the statistical department made their tests in terms of commodities; that they were made available to this witness, and that he reviewed them. Now, if the question that I asked the witness will be read back, it will be quite obvious that I did not ask the witness whether it was accounted for by expense. My question was whether or not the factors determined—the factors used in determining the general differential price policy between the super-markets and the service stores were the factors used in connection with the differential in the Morton's blue package salt. The word "expense" was not used in the question.

Mr. Haslett: Mr. Examiner, I think the best way to do is to read the question back. This witness has testified that he hasn't seen the Morton salt figures on the blue package salt; that they were made by the statistical department, but he hasn't seen them. He doesn't remember them.

Mr. McBride: He hasn't so testified.

Trial Examiner Purcell: The record is clear on that, I think, and stands for itself that he did so testify. Read back Mr. McBride's question.

(Question was read.)

Trial Examiner Purcell: Did I clearly state your question?

3315 Mr. McBride: No, you did not. The word "expense" is not used there, Mr. Examiner. It is not predicated entirely upon expense. I am trying to find out from this gentleman, after describing the general factors entering into the price differential between the super-markets and the service stores, whether those factors were the ones that accounted for the differential in the particu-

lar item, which, according to counsel, were so—which they were so desperately interested in, on Morton's salt. I think it is a perfectly fair question. The witness did not say he had not seen the statistical records on the blue package salt. He testified he had seen these statistical reports, and he didn't recall that he could put his finger on any particular of all of these many hundreds or thousands of items they carry and which would be covered by that survey.

Mr. Haslett: Mr. Examiner, we could go on until doomsday, arguing as to what the witness said, and what the question was. The question speaks for itself. He asked if the differential was entirely taken up in the operating costs.

Trial Examiner Purcell: That is what I understood.

Mr. Haslett: And this witness has said that he hasn't seen them. That is the question.

Mr. McBride: There is another factor—

Trial Examiner Purcell: Don't go any further on
3316 the record, please.

Mr. McBride: I want it clear that other factors were described at length by the witness, and not just expense.

Trial Examiner Purcell: I ruled on that, did I not, Mr. Reporter?

The Reporter: Yes, sir.

Trial Examiner Purcell: Let the ruling stand.

Mr. McBride: I will have an exception with the right of appeal.

Trial Examiner Purcell: You may have it.

Q. (By Mr. McBride) Mr. Carlton, what are your duties in connection with the advertising policies of your company, if you can describe them in just a sentence or two?

A. I handle the general advertising policies for my division.

Q. Does the Great Atlantic & Pacific Tea Company advertise?

A. Yes, sir.

Q. Why do they advertise?

A. Why do they advertise?

Q. Yes, sir.

A. Naturally they advertise for the purpose of getting volume.

Q. Does the Great Atlantic & Pacific Tea Company in your particular division ever advertise salt items?

3317 A. Well, I would like to answer that in this way. There is no policy against advertising them. I can't state definitely any particular date on which they were advertised.

Mr. Haslett: I move it be stricken out as not responsive.

A. Then I will answer it "yes".

Q. (By Mr. McBride) That salt items have been advertised from time to time?

A. Yes, sir.

Q. And was the purpose of advertising those salt items the same as the general purpose you stated in your answer to the previous question?

A. Yes, sir.

Q. Mr. Carlton, as a result of your connection with the advertising policy of the Great Atlantic & Pacific Tea Company, can you state whether or not the sale of the items advertised has increased as a result of the advertising?

A. In most instances, yes, sir.

Q. Would that be true, if you know, with respect to salt items?

A. I have no specific information on salt, but I would say "Yes."

Q. In other words, from the basis of your experience, you would say that would be true on salt items as well as on other commodities?

3318 A. Yes, sir.

Q. Is that correct?

A. That is right.

Q. Mr. Carlton, do you know whether or not the same cost basis was used on all commodities regardless of whether they are putting on prices for super-markets or for service stores?

Mr. Haslett: I object to that, if the Examiner please. I do not know what counsel means by the same cost basis.

Trial Examiner Purcell: Read the question, Mr. Reporter.

(The question was read.)

Mr. McBride: I will withdraw that question.

Q. (By Mr. McBride) I believe you testified, did you not, Mr. Carlton, that the cost basis, as you last examined

it, on Morton's blue package salt was $1.40. Do I state your testimony correctly on that?

A. As I remember—I do not remember that I testified to that, but that is the cost that is used in the Jacksonville unit.

Q. Is that $1.40 cost used in pricing for retail Morton's blue package salt in the super-markets? And also used in pricing for retail in the service stores?

A. In so far as the cost of the commodity is con-
3319 cerned, yes, sir.

Q. In other words, you didn't use $1.40 in pricing for the super-markets and $1.45 or some other figure in pricing for the service stores?

A. No, sir.

Q. Is that true of all other salt items that you use the same cost regardless of what type of store you are pricing for so far as price is concerned?

A. That is true.

Q. Is that true on all commodities when you price for all service stores and super-markets?

A. Assuming that they are all handled through the same modes of transportation, yes.

Q. As to the cost factor alone?

A. That is right.

Q. Then, is the differential in price between Morton's blue package salt of eight cents, or two for fifteen cents, in the super-markets, and ten cents in the service stores accounted for by factors entering into your pricing formula other than the cost factor?

A. Yes, sir.

Mr. Haslett: I object to that. That is predicated upon the same basis as the other question. It is just a horse of a different color.

Mr. McBride: The same color.

3320 Trial Examiner Purcell: I think it is the same question that was put before, Mr. McBride, and the ruling you had on it.

Mr. McBride: Your Honor, it is not the same question.

Trial Examiner Purcell: Of course, it isn't the same, but it is to the same effect.

Mr. McBride: That is correct, and very obviously and admittedly is posed for the same purpose. The witness has now testified specifically, and there was plenty before in the record on that, that it doesn't make any difference

which store they are pricing for, that the pricing factors are the same; that the $1.40 as to Morton's blue package salt, is the same, and that the same cost factor is used on all commodities whether they are pricing for their supermarkets or for their service stores. Now, with that specifically in the record, and proceeding immediately to the question I have just asked, it seems to me entirely within the realm of reason and any sort of sanity on the record to ask, what should be a foregone conclusion, that there must have been other factors than cost which accounted for the differential between the retail prices in the super stores and the service stores, and I can't, for the life of me, understand why the other question was put out. I have approached the same thing admittedly, and I
3321 have done it in this way, and I am trying to find out, by the process of elimination, whether that is or is not a fact.

Mr. Haslett: I think counsel's statement admits a flagrant violation of the Examiner's ruling in trying to get into the record something that the Examiner has already ruled out that this witness is not competent to testify to.

Mr. McBride: There is nothing flagrant about it, Mr. Examiner.

Trial Examiner Purcell: Don't get into personalities, gentlemen. The objection is sustained.

Mr. McBride: Will you tell me—Excuse me. May I go off the record?

Trial Examiner Purcell: Off the record, but don't address any question to the Examiner on the ruling.

(Discussion off the record.)

Trial Examiner Purcell: Let us go on the record and proceed.

Trial Examiner: You may proceed, Mr. McBride.

Mr. McBride: Will you note my exception, and I reserve the right to appeal.

Trial Examiner Purcell: Yes, sir.

Mr. McBride: Mr. Examiner, I should like the record to show that I have called this witness on behalf of the respondent; that he has identified himself as the regional sales manager of the Great Atlantic & Pacific Tea
3322 Company. That he has held that position for approximately four years as I recall the record. That prior to that time he was the sales manager of the Jacksonville unit for some thirteen years. He has testified as

to his duties and responsibilities as to the first position and as to the second position. He has testified with respect to his participation in the policies of the differential pricings between super-markets and service stores. He has testified as to the factors which enter into the pricing formula. He has testified specifically with respect to certain package salts like Morton's blue package salt, and other salt items.

Therefore, I wish the record to show that I tender this witness as being qualified, in his position, to answer the various questions regarding policy and regarding the factors, which I have attempted to elicit, and which have been withheld from the record by objection of counsel for the Commission, to which the Examiner has sustained the objection regarding that type of question. I would like to have the record show the tender of this witness on that basis for the purpose of eliciting that type of information.

Trial Examiner Purcell: Let the record so show.

Mr. McBride: You may cross-examine.

Cross-Examination by Mr. Haslett.

Q. Mr. Carlton, has your company ever advertised
3323 Morton's blue package salt that you recall, sir?

A. I do not remember specifically, no.

Q. You do not know whether it has ever been advertised by the Great Atlantic & Pacific Tea Company or not, do you, Mr. Carlton?

A. I can't speak definitely, no, sir.

Q. Mr. Carlton, why did you arrive at the ten cent price on the blue package salt for your regular stores?

A. Why?

Q. Yes, sir.

A. Taking into consideration all the various factors to which I previously testified, and also the general price which was more or less a matter of established record.

Q. I see. And was the price at which your competitors were selling Morton's blue package salt taken into consideration at the time this price was fixed?

A. I can't say specifically whether they were or not at that particular time, because that has been some years ago.

Q. Mr. Carlton, you have recalled all of the other factors that have entered into the fixing of that price. Can't

you remember whether or not the price of the competitor was included?

A. I remember the other factors because it is a matter of established policy.

Q. The established policy of your company?

3324 A. Yes, sir.

Q. Isn't it the established policy of your company to keep its prices in line in order to be competitive?

A. We try to be competitive, but we don't check competitor's prices on every new commodity that we price.

Q. But how can you be competitive if you don't check your competitors' prices?

A. If we are out of line with competition to the extent that it is affecting our sales, it soon comes out after the retail price is made.

Q. Well, Mr. Carlton, isn't it one of the functions of your office to send to the New York office the tear sheets of the competitors' prices?

A. We only send tear sheets to New York to substantiate some advertising agreement.

Q. And not on the prices of competitors?

A. No, sir.

Q. Has that ever been done?

A. Not to my knowledge.

Q. You testified that there would have to be some line drawn in fixing the price of the blue package salt, and Mr. McBride asked you if the $1.35 price would affect your ten-cent price in the regular stores?

A. Yes, sir.

Q. Where would that line be drawn, if you know?

3325 A. Well, that would involve one of our retail pricing factors, and that is what we term good or bad prices. In other words, when you go up the scale, five cents is a good price, an extra five cents would be, two for fifteen, or eight cents for a single package. Next to that would be ten cents. Any price in between those, as you go up the line, you get two for a quarter and so forth. The prices in between, those prices which we have found to be ideal prices, usually would not be considered, and the cost price would have to be reduced or advanced sufficiently to make it necessary to go to the next lower or higher what we call ideal price.

Q. How would you reduce your $1.40 price if you wanted to reduce the price, the retail price to the consumer?

A. You are speaking now of our retail price in the supermarket or regular stores?

A. Regular stores.

A. The next best price, for a commodity like Morton's salt, and I would like to qualify that, too: The commodity would have to be considered because you readily understand that some commodities sell in volume, I should say in multiples of two, and some will sell in multiples of three and so on, depending on the consuming public's aptitude for buying this commodity. On Morton's salt specifically, I would say that we would have to have a reduction sufficiently to show us approximately the same gross at two for
3326 fifteen or the eight cent price.

Q. I see. Then, would five cents be sufficient in order to reduce the price to the consuming public?

A. Five cents a case?

Q. Yes, sir.

A. No, sir.

Q. What would be the largest spread that would be necessary in order to effectuate a lower price to the consuming public?

A. That would entail a little computation as to gross profit, but, offhand, I would say that there would be a reduction of two and a half cents. It would have to be better than fifty cents a case.

Q. It would have to be better than fifty cents a case?

A. Yes, sir.

Q. Do you know what rebate your company gets from the Morton Salt Company on its products?

A. I do not.

Q. Have you ever had occasion to try to find out?

A. Not Morton salt specifically, no, sir.

Q. You stated that it becomes sort of an instinct in fixing prices?

A. Yes, sir.

Q. That so many factors would have to be taken into consideration?

3327 : A. Yes, sir.

Q. Did you mean by that that one must be especially talented in order to be able to fix prices on commodities?

A. You have to have a certain merchandising instinct, I think, to succeed in any merchandising job, but, of course, based on that—pardon me. In addition to that, you have

to have considerable experience as to the movement of merchandise and the freight factors, and so forth, in order to know what gross profit each individual commodity should take.

Q. Isn't it a fact, Mr. Carlton, that the real purpose for putting in the eight cent price in the super-markets on the round package salt was to sell more of it?

A. No, sir.

Q. What was it? A desire to let the public profit at a lower price?

A. That retail price was in line with our retail price policy for the super-markets.

Q. Then the volume which accrued as a result of the lower price was incidental to the policy of the company?

A. May I have that question?

Trial Examiner Purcell: Read the question, Mr. Reporter.

(The question was read.)

A. Not altogether.

3328 Q. (By Mr. Haslett.) Will you explain that, sir.

A. Well, I will explain it in this way: There are things—I will have to go into a lot of detail to explain these things, but I am trying to get the story over as it has actually existed. Every commodity we put in the store, including Morton's salt, is placed there with the idea of getting the utmost volume, and that, I might say, is one of the factors that we use in arriving at the retail price, but it is not the only factor.

Q. Would you say it is the most important factor?

A. I would not say it is the most important factor.

Q. What is the most important factor?

A. Well, this may seem a little peculiar to you, but the policy of our company is to sell all of our merchandise at a saving to the customer.

Q. That is not peculiar to me. I think that might be true, but I think it is a most important factor of your company is to make money and to stay in business; isn't that true?

A. That, of course, is the ultimate objective of every company, I would say.

Q. And the purpose of your lower price is to increase the volume or to divert business from competitors to the Great Atlantic & Pacific Tea Company?

A. We do not take competition into consideration
3329 a great deal in making our retail prices. There are many items that they are below us on, as we may be below them on quite a few.

Q. But you take into consideration competition's customers in fixing the lower prices?

A. And I might also add, if I may,—This isn't an answer to the direct question, but the percentage of gross profit that we make on a commodity may or may not reflect your need personally as compared to another competition. You may operate a store and sell Morton's salt or any other commodity at a forty per cent gross. A man across the street might open a store and sell at twenty-five per cent, and he might make a nickel more net profit than you, because he operates more efficiently.

Q. But if the two people were operating on the same basis and one was paying a smaller price for the same commodity as the other, one would be benefited, wouldn't he, Mr. Carlton?

A. That may or may not be true. They would be benefited so far as the cost of merchandise is concerned.

Q. If they were operating on the same basis of volume?

A. If all factors were the same, yes. If they operated just as efficiently. However, that isn't exactly always true.

3330 Q. The one receiving the better price would be benefited, would he not?

A. That is right.

Mr. Haslett: I think that is all.

Redirect Examination by Mr. McBride.

Q. Would it follow, Mr. Carlton, that because the one with the lower price, taking counsel's last question, and with all other factors being the same, that because the other person might be benefit that you thereby would be injured?

A. Not necessarily.

Mr. McBride: I think that is all.

Recross Examination by Mr. Haslett.

Q. What do you mean by not necessarily?

A. Again, may I street this: Mr. McBride's question did not state that all other factors were the same. The man across the street may not operate as efficiently as I do.

Q. My question was predicated on the assumption that all factors were identical?

A. That is right, and I answered yes to that, did I not?

Q. That is right, sir. There would be an adverse injury to the one who pays the higher price as compared to the man who receives the lower price, I mean, all things being the same?

A. That would be true generally on what we
3331 would call trading items. It is a well known fact, however, that even though there might be a differential of retail prices on some item which is not classed as a trading item, the sales may not enhanced in the store by the higher retail, because the customers do not seek that grocery on the unimportant items.

Q. That would be true where there are two or three thousand items in which you cover up the lower price or a higher price, but where you have only one item, and we are dealing only in salt, the resale price of one customer as compared with another, which customer would be lower, he would have a substantial advantage over the competitor with the higher price?

A. I don't think I am able to answer that because I never saw strictly salt stores.

Q. I agree with you. I never saw a strictly salt store, but I am asking you to assume those as being the facts.

A. I do not believe I can answer that. It would simply be a guess, anything that I might answer.

Q. Is it because you can't answer it or you don't want to answer it?

A. Because I can't answer it. All I could answer would be an opinion, because I do not know of any strictly salt stores.

Q. You testified here this afternoon, and that testimony has been based on opinions and guesses and estimates. Couldn't you assume those as a state of facts,
3332 and give me an answer on that?

Mr. McBride: If the Examiner please, I move that that question be stricken. It is taking a wide liberty on this record as to counsel's characterization of what has transpired this afternoon. There might be grounds for disagreement of that characterization. I object to the question on that basis.

Mr. Haslett: Well, my characterization of the witness' testimony is not a part of the evidence. It is a statement of counsel. I am asking him to assume these facts as being true, and give his answer on those facts.

Trial Examiner Purcell: I will sustain the objection on the ground of the characterization by counsel of the witness' testimony.

Q. (By Mr. Haslett.) Mr. Carlton, would you assume for me, please, that there are two people engaged in the salt business only or alone, and one is selling at a higher price than the other, and all factors are the same; do you feel that the one that is selling at the lower price would be injured by the fact that his competitor was the one selling at a higher price,—that the one selling at a higher price would be injured by the fact that his competitor was selling at a lower price?

A. That would depend altogether on how strongly this differential in price was brought before the public.

3333 Q. I ask you to assume all factors were the same, sir. One was selling at $1.60 and the other selling at $1.40.

Mr. McBride: I assume I may have my usual objection to these questions regarding the salt retail business only?

Trial Examiner Purcell: You have, sir. Had counsel finished his question.

Read the question.

(The question was repeated.)

A. You say $1.60 and $1.40. You mean that is the wholesale price?

Q. Yes.

A. All factors being the same, you mean the retail price would be the same?

Q. No, sir. We will say—Let us assume, selling at eight cents and ten cents, sir, getting into the retail line?

A. I should like to leave out costs. I am not very familiar with costs, but I would say this, that if one competitor was selling an important commodity at eight cents, and another competitor was selling it for ten cents, and

that both did the same amount of advertising, the same amount of display and the same amount of sales effort, I think the man with the eight cent price would sell more than the man with the ten cent price. That is assum-
3334 ing, they have the same facilities of distribution; the same type of store, and, as you say, all other factors were the same.

Q. That is the answer that I have wanted. Thank you very much.

Trial Examiner Purcell: Any redirect examination, Mr. McBride?

Mr. McBride: Yes, sir.

Redirect Examination.

Q. (By Mr. McBride.) Mr. Carlton, when you referred in your answer to Mr. Haslett's question as to trading items, what did you mean by trading items?

A. We refer to trading items as those items which are bought with the most frequency in grocery stores, such as sugar and butter and coffee, and compound lard or in some packages, pure lard. The exact trading items differ in different sections, but we can include in that group all items which are bought with considerable frequency by the customer.

Q. Would salt be one of those trading items?

A. In some sections it might be considered as a trading item.

Q. Is it in the territory with which you are familiar; or would it be in the Jacksonville unit?

A. I would not consider it a trading item in the Jacksonville unit territory, no, sir.

3335 Q. But it might be in some other units?

A. Yes, sir.

Q. I believe you testified that you had never heard of a retail business engaged in the retail selling of salt only?

A. Yes, sir.

Q. Is that correct?

A. That is correct.

Q. In the retail business with which you have had your experience, is it generally true or not that each particular commodity is considered in relation to the entire retail line in establishing the policy of that retail store or company, or is each type of commodity isolated and treated entirely separately?

A. Each individually.

Q. In establishing the retail price?

A. Yes, sir.

Q. I should like to get back once more to this last example of Mr. Haslett's, if I can recall it. Notwithstanding the fact that you have never heard of a retail store in salt only, take as an assumption of facts, you sell for ten cents and this other retail salt store sells at eight cents, all factors being the same, advertising and facilities are the same, as you stated them in your answer, and I believe that you testified that under such circumstances the man with the eight cent price might sell more
3336 than the man with the ten cent price?

A. That is correct.

Q. Would it necessarily follow that you, with your ten cent price, in that example, having reduced your price to eight cents, that you would be injured or in any way adversely hurt?

A. There are so many factors to be taken into consideration there. I think you have to consider them all. Assuming that everything is the same, the same type of store, and everything the same, operating expense, and other factors are exactly the same, I would be hurt to the extent that I would be getting two cents less per package profit.

Q. Would it be possible that in reducing your price from ten to eight cents that your volume might increase or decrease to a degree sufficient to offset the two cent loss in gross profit?

A. That would depend entirely on whether or not competition had been so emphasizing this eight cent retail price as to take my customers away.

Q. In other words you simply can't have an assumption of facts as contained in those questions?

Mr. Haslett: I object to that question. Why can't you?

Trial Examiner Purcell: Just make your objection. No arguments are necessary.

3337 Mr. Haslett: Very well.

Trial Examiner Haslett: The objection is sustained.

Mr. Haslett: I have no further questions.

Mr. McBride: I have no further questions. Thank you very much, Mr. Carlton.

Trial Examiner Purcell: You are excused.

(Witness excused.)

3338

Atlanta-Biltmore Hotel,
Atlanta, Georgia,
Monday, November 9, 1942.

Met, pursuant to notice, at 10 a. m.

Before:

James A. Purcell, Trial Examiner.

Appearances:

John T. Haslett, Esq., Attorney for the Federal Trade Commission.

L. McBride, Esq., 310 South Michigan Avenue, Chicago, Illinois, attorney for respondent.

3340 Mr. McBride: Mr. Examiner, before calling my first witness this morning, I wish to call attention to the fact that in connection with the testimony of Mr. E. L. Hagin at Jacksonville, Florida, the reporter has it shown on page 3208 of the transcript of the record of that case that Mr. Hagin is the proprietor or owner of United Food Stores, which is incorrect, not only from the statement made by Mr. Hagin at that time, but from his testimony of the witness on behalf of the Commission.

So, Mr. Haslett, is it stipulated by and between the attorney for the Commission and the attorney for the respondent that the answer to the question appearing upon page 3208 of the transcript, propounded to Mr. Hagin, "With what company?" should have been "Hagin-Peters Company, Incorporated," and not United Foods Stores as now appears on that page of the transcript.

Mr. Haslett: That is correct.

Mr. McBride: Mr. Examiner, I will call as my first witness, on behalf of the respondent this morning, Mr. Clanton.

D. W. CLANTON, was thereupon called as a witness for the Respondent and, having been first duly
3341 sworn, testified as follows:

Direct Examination by Mr. McBride.

Q. Mr. Clanton, will you state your name and address for the record, please?

A. Business address?

Q. Home address.

A. D. W. Clanton, C-l-a-n-t-o-n, 960 Oakdale Road, Northeast, Atlanta, Georgia.

Q. And what is your occupation, Mr. Clanton?

A. I am sales manager for the Atlanta Unit of the Great Atlantic & Pacific Tea Company.

Q. By the "Atlanta Unit," will you describe, geographically, the territory that the Atlanta Unit serves?

A. The Atlanta Unit serves the state of Georgia, except the extreme southern portion of the state, the extreme Eastern portion of the State, and it also includes Eastern Tennessee.

Q. And is the headquarters of the Atlanta Unit here, in Atlanta, Georgia?

A. It is.

Q. And is your office?

A. That is right.

Q. How long have you held the position as sales manager of the Atlanta Unit?

3342 A. And were you connected with the A&P Tea Company prior to that time?

A. I was.

Q. In what capacity?

A. I was assistant sales manager for part of that time, and I was in Florida on clerical work, keeping records of various kinds, prior to that time.

Q. And as assistant sales manager, was that here in Atlanta, in the Atlanta Unit?

A. It was.

Q. And for how long were you serving in that capacity?

A. Oh, about two years.

Q. Will you describe, Mr. Clanton, what your duties are as sales manager of the Atlanta Unit?

A. Well, my duties are to see that the company's pol-

icies with reference to sales and advertising matters are complied with in this territory.

Q. That is, with respect to the entire territory you have just described as being the Atlanta Unit?

A. It is.

Q. Do you have anything to do with the buying, Mr. Clanton?

A. Absolutely nothing.

Q. Do you set any of the retail prices for the stores in the Atlanta Unit?

A. I do.

3343 Q. Do you with respect to all commodities?

A. I do.

Q. Will you describe, if you can recall, the number of retail stores served by the Atlanta Unit?

A. At what time?

Q. Currently.

A. 111.

Q. 111?

A. Yes.

Q. Are they all of the same type?

A. They are not.

Q. What types do you have, and the numbers of each?

A. We have what we call conventional stores, which are the small regular service stores; we have 70 of those. We have another group of stores referred to as "super markets"; we have 41 of those.

Q. Now, with respect to the City of Atlanta alone, or the Metropolitan area of Atlanta, can you give me the number of each type of stores in the Metropolitan area of Atlanta?

A. In what we term "Greater Atlanta", which includes College Park, East Point, and Hapeville, in addition to the City of Atlanta, we have 19 stores termed as super markets and nine as regular service stores.

Q. How long have you had super markets in the Atlanta area?

3344 A. The first super market was opened on March 10, 1938, I believe.

Q. And then additional stores were opened subsequent to that, super stores?

A. That is right.

Q. Does the Atlantic & Pacific Tea Company maintain a warehouse in Atlanta, or in any portion of the territory served by the Atlanta Unit?

A. It does.

Q. And what is the function of that warehouse?

A. The function of that warehouse is for the storage of merchandise to be supplied to our stores, and from which our stores are supplied.

Q. Are all stores supplied in full, or only in part from the warehouse?

A. Only in part.

Q. Only in part?

A. That is right.

Q. With respect to the commodities that are served to these stores out of the warehouse, what transportation arrangements do you use, or what transportation policy is followed? Do you use your own trucks?

A. Well, I have nothing to do with transportation. I can only give you information as I believe it is, and not as I know it to be.

3345 Mr. Haslett: Well, I object to that type of information.

By Mr. McBride:

Q. Does the Atlanta Unit of the Great Atlantic & Pacific Tea Company handle salt in its various stores?

A. It does.

Q. Will you describe the types and kinds of salt that it handles?

A. Well, we have Four Seasons salt, which is the all-round 24-ounce package, I believe.

We have Jefferson Island salt, which is a hexagonal package.

We have Jefferson Island salt, which is a square package one and a half pounds, and we have Morton's salt, which is the blue 26 ounce package, free running and iodized.

Q. That is the round package of Morton's salt?

A. The round package, that is right.

Q. Do you know the prices at which these various salt items are sold, Mr. Clanton, in the stores in the Atlanta Metropolitan Area?

A. Yes, I can give you that information. I made a note of the prices. This is just for Atlanta?

Q. For the Atlanta Metropolitan District, yes.

A. Well, the Jefferson Island salt, 24 ounce hexagonal package, sells for 5 cents in the regular stores, and 4

3346 cents in the super markets.

The Jefferson Island square package, plain and iodized, 1½ pounds, sells at three for 10 cents in all stores.

Four Seasons Salt, plain and iodized, two pound package, sells for 5 cents in all stores.

Q. You are referring to a memorandum here, Mr. Clanton?

A. Yes.

Q. Did you prepare that memorandum?

A. I did.

Q. And from what did you prepare it?

A. From our official records in the sales department.

Q. Records that are kept under your supervision?

A. That is right.

Q. And that memorandum reflects the record of the A & P Tea Company?

A. Yes.

Q. Now, outside of the Metropolitan Area of Atlanta, what are the prices of those items?

A. There is no difference in the City of Atlanta prices on these particular commodities, and the prices for the stores outside of the city.

Q. And your prices on the Morton's blue package in the regular stores is what?

A. In Atlanta?

Q. In Atlanta, in the Atlanta Metropolitan Area?

3347 A. In Atlanta, the regular service stores, at present, it is 9 cents on Morton's blue package.

Q. And in the super markets in Atlanta proper?

A. In Atlanta, the super market price is 7 cents at the present time.

Q. Now, with respect to the stores outside of the Atlanta Metropolitan Area, what is the price of Morton's blue package, if there is any difference?

A. Well, in the regular service stores, we have 9 cents in the outside, usual regular service stores. We have two for fifteen cents in the city of Chattanooga regular service stores, and in South Pittsburgh, Tennessee, and Calhoun, Georgia.

In Knoxville, and the one-store towns around Knoxville, the small towns around Knoxville, we have 9 cents in the regular stores, and in all super markets in Tennessee we have 7 cents.

Q. I believe you testified, Mr. Clanton, that you fix the

retail prices of all of the commodities in the stores served by the Atlanta Unit, is that correct?

A. I did.

Q. And did you fix the prices on the salt items to which you just testified?

A. I fixed the prices that were changed, since I became sales manager.

3348 Q. Have any of the prices in the various territories on Morton's blue package been changed since you became sales manager?

A. They have.

Q. And you fixed the prices and made those changes, is that correct?

A. That is correct.

Q. With respect to the prices on which there had been no change, have you had occasion at any time to review those prices?

A. I have.

Q. In the various areas for Morton's blue package?

A. That is right.

Q. Would that also be true of other salt items?

A. Oh, yes.

Q. So that you have either fixed the prices or reviewed them, since you have been sales manager?

A. That is right.

Q. Can you describe, briefly, Mr. Clanton, what factors are considered by you, as sales manager, in fixing retail prices for the various commodities served through the stores in the Atlanta Unit? I am referring now to general factors on all commodities, and not to salt alone at the moment.

A. You mean the general factors that we would 3349 necessarily consider in establishing selling prices?

Q. That is correct.

A. Do you refer to a new commodity or a commodity which has already been installed?

Q. I should like both. Will you give me the new commodity first, and describe that, if there is any difference?

A. Well, generally speaking, they would be the same. However, in the case of a new commodity it is possible, at times, that we might wish to establish a slightly lower price than we would ordinarily, in order to introduce a new commodity; but, generally speaking, we consider the cost of the commodity, we consider the competitive price,

if competitors carry the same product. If competitors do not carry the same product, we try to consider the proposition of competition on similar or the most comparable commodity. Another matter to be considered is the turnover which we have on that commodity, that is, how fast it sells, how many times we would have to replenish the stock in the stores during the year; and, transportation is considered.

Another matter that is very important is what we call "natural prices". For instances, we don't like a 6 cent price, theoretically, because a customer, we feel, thinks, "Well, I have to give one nickel and break another nickel in order to buy that commodity. We hesitate to go beyond a nickel, where we can help it; and, the same thing
3350 is true of a 10 cent item or a 15 cent item. Those, generally, are the principal contributing factors in establishing the retail.

However, other factors may enter into a particular commodity. There may be some peculiar circumstances surrounding a particular commodity, or peculiar circumstances at the time we are seeking a new commodity which might influence the price.

Q. Now, you mentioned cost as one of those factors, Mr. Clanton. From what source do you obtain the cost on the various commodities that you price?

A. From the purchasing department.

Q. They simply furnish you with a cost sheet as to all of the commodities that are under consideration?

A. Yes.

Q. Would that be true of salt items in general, and Morton's blue package in particular?

A. It would.

Q. What is the cost that has been furnished you from your purchasing department on Morton's blue package?

A. $1.42.

Q. And that is the cost basis that you used in setting or reviewing the prices on Morton's blue package. Is that correct?

A. That is correct.

3351 Q. In the general process of setting prices, do you consider the particular commodity or group of commodities, of which an item is a constituent part alone, or do you consider it in terms of the over-all picture of the store or stores involved?

Trial Examiner Purcell: Let me have that question read.

(Question read.)

Mr. Haslett: I object to it, Mr. Examiner, on the ground that it is irrelevant and immaterial to the issues in this case.

Trial Examiner Purcell: Objection overruled.

Mr. Haslett: An exception.

Trial Examiner Purcell: An exception.

By Mr. McBride:

Q. Do you wish the question read again?

A. Please.

Mr. McBride: Will you read the question, Mr. Reporter?

(Question read.)

Mr. Haslett: I want to note an additional objection as to the ambiguity of the question. I don't think it is susceptible to an answer.

Trial Examiner Purcell: In what particular is it ambiguous?

3352 Mr. Haslett: He says in considering prices do you consider the particular item or group of items. Now, that is a contradictory phrase, "particular item or group of items". Does he consider a group of items or particular items in setting the price? Listen to the question.

Trial Examiner Purcell: Yes, I was troubled, when I first heard the question put.

Mr. Reporter, will you read that question again, please?

(Question read.)

Trial Examiner Purcell: The objection is overruled. Do you understand the question, Mr. Witness?

The Witness: I do.

Trial Examiner Purcell: You may answer.

The Witness: Well, I would say this: it is in no way possible to isolate one particular item from the general over-all picture of our business. However, there are certain factors that might influence the establishing of retail on that particular commodity alone. As I mentioned a short while ago, there is the factor of competition as one thing that might influence it. Then, quite often, prices are changed with no other reason that in an effort to change the over-all picture.

By Mr. McBride:

Q. So that the over-all picture becomes a definite factor in setting retails of the particular item or commodity?

Mr. Haslett: Objected to as leading.

Mr. McBride: I will withdraw the question. I think the objection is well taken.

Trial Examiner Purcell: The question is withdrawn.

By Mr. McBride:

Q. Mr. Clanton, have you ever engaged in the retail business of retailing salt alone?

A. No, sir, I have not.

Q. You testified a few minutes ago, Mr. Clanton, to two different prices of Morton's blue package, one in your super markets, and one in your service stores, with respect to a substantial portion of the areas served out of the Atlanta Unit, is that correct?

A. That is correct.

Q. In making the prices for those stores, two types of stores, did you use the $1.42 as the cost in both instances, or did you use differing cost prices for the two stores, the two types of stores?

A. That is the only cost that I used.

Q. So that you built your retail price in the super markets and in the service stores in each case on the $1.42 cost, to which you previously testified?

A. I did.

Q. Will you explain, Mr. Clanton, the reason or reasons for the differential in prices of Morton's blue package between the super markets and the service stores?

Mr. Haslett: I object unless the witness can testify as to the actual reasons.

Trial Examiner Purcell: We have had that question up before, Mr. McBride, and I sustained an objection.

Mr. Haslett: There may be thousands of reasons. If he knows them all, he may testify to them.

Trial Examiner Purcell: I have had occasion to sustain the objection. Unless this witness, as counsel points out, can testify of his own knowledge to all the varying factors.

Mr. McBride: Mr. Examiner, I have only this comment to make: the objection comes before the witness has even answered the question, and I take it that the objection

should not be sustained until we see whether the witness can answer the question as to the factors involved.

Mr. Haslett: I am not objecting to the answer, I am objecting to the question.

Trial Examiner Purcell: I think the objection comes at the proper point, Mr. McBride, unless you can qualify this witness in advance for putting any such question.

Mr. McBride: I wish the record to show that my argument in support of the question and against the
3355 objection is the same, in substance, as that which I put on the record in Jacksonville with respect to a similar question to Mr. Low and Mr. Carlton of the A&P Tea Company, and I wish to note an exception and reserve the right to take it to the Commission.

Trial Examiner Purcell: Let the record so state.

By Mr. McBride:

Q. Mr. Clanton, are you familiar with the arrangement of various types of salt items, to which you testified, as that arrangement is followed in the various stores in the Atlanta Unit? By that I mean the physical arrangement?

A. I am.

Q. Will you describe what the general method of arrangement or display is in the stores in the Atlanta Unit with respect to the salt items that you have described?

A. I don't exactly understand the question. May I ask—

Trial Examiner Purcell: Read the question, Mr. Reporter.

(Question read.)

Mr. McBride: Mr. Examiner, let me withdraw that question, please?

Trial Examiner Purcell: Let the question be withdrawn.

(Question withdrawn.)

By Mr. McBride:

3356 Q. Mr. Clanton, with respect to the physical location of the stores served by the Atlanta Unit, having reference now only to the salt items which you have previously described, will you describe the general physical arrangement and location of the salt items, as handled in your various stores?

A. The salt items are usually displayed in the same

general section or vicinity of the store. It is usually what we term shelf stock, placed in the shelf. You have one brand here, and another brand adjacent to it, and then the next brand. As a rule, that is the general arrangement. However, we have, as a rule, what we call supplementary display. We may have an additional display on the floor, or in the large super markets we may have what we term the end of the Battle Ship Display, which is in the large circle in our super markets.

Q. Is that same general policy pursued on all commodities?

A. Yes, generally.

Q. What is the purpose, if there is any special purpose, Mr. Clanton, for the special displays or battle ship displays? Is that the way you described them?

A. Yes.

Q. What is the purpose of that type display of the salt items?

A. Well, the purpose of that display is an effort to sell larger quantities of the salt, and to bring it more
3357 forcibly to the attention of customers visiting the stores.

Q. I believe you testified you had something to do with advertising?

A. I did.

Q. What are your specific duties, in brief, with respect to the advertising out of the Atlanta Unit?

A. Simply to see that our company's advertising policies are carried out in this particular territory.

Q. What is the purpose of advertising, if you know?

A. The purpose of advertising, it has several purposes; one is to build good will for the company by means of constantly bringing the company's name and various products handled by the company to the attention of the consuming public. Another is to try to increase your sales volume by competent advertising. Those are the principal factors.

Q. Has the Atlanta Unit of the A&P Tea Company ever advertised salt items?

A. It has.

Q. Was the purpose of advertising salt items the same purpose that you described in answer to the previous question?

A. I would say, generally, yes.

Q. Was there any additional reasons for advertising salt than the other reasons that you have given?

A. No, I don't know of any.

3358 Q. Has the A&P Tea Company in the Atlanta Unit ever advertised Morton blue package salt?

A. It has advertised Morton's salt, 26 ounce package.

Q. That is the round package?

A. It was not referred to as "blue" in the ad, of course.

Q. I simply refer to that as a convenient matter. The 26 ounce round package, free running and iodized, is what I have reference to?

A. It is.

Q. And what was the purpose in advertising that, Mr. Clanton?

A. The same as I stated before, generally, bringing the customer's attention to the product in an effort to stimulate sales.

Mr. McBride: You may cross-examine.

Cross-Examination by Mr. Haslett.

Q. Mr. Clanton, you stated that in fixing the retail prices of the various commodities, that competition is a factor that is taken into consideration in arriving at the retail price. Is that correct, sir; one of the factors?

A. It is one of the factors, yes.

Q. Is it the policy of your company to take into consideration the prices at which its competitors are selling the various commodities to your customers in setting

3359 the retail price of those various commodities?

A. I would say it is generally, but not specifically.

Q. Generally, that is the policy?

A. Generally, but not specifically. There are exceptions.

Q. When you fixed the price of Morton's round package salt, did you take into consideration the prices of competitors at the time you so fixed prices?

A. Do you refer to any prices for a specific price?

Q. On the round package salt.

A. Well, there are several changes that have been made in the salt. Do you mean every change that has been made?

Q. When you made the change yourself?

A. Of course, I can't remember exactly what I did back two or three years ago on every price change. All I can tell you is that, generally, we try to stay in line with competition, particularly on commodities that are well known to the public.

Q. And Morton's round package free running "when it rains it pours" salt is well known to the public, is it?

A. I would think it is, yes.

Q. Mr. Clanton, do you know the price which your company is actually paying to the Morton Salt Company for its round package salt, per case?

A. No, I do not.

Q. Do you know whether your company gets any special allowance or discount from the Morton Salt Company?

3360 A. No, I have nothing to do with that; that information does not come from my department.

Q. They just furnished you the $1.42 price to base your retail price on?

Mr. McBride: I object to that, Mr. Examiner, unless counsel will state what he means by "they".

By Mr. Haslett:

Q. I believe you testified that the purchasing department in your company furnished you with the price?

A. Yes.

Mr. Haslett: When I say "they", I mean the purchasing department in your company.

Mr. McBride: The objection is withdrawn.

By Mr. Haslett:

Q. Would the retail prices of your salt have been changed, or been affected, if the purchasing department of the company had furnished you a price of $1.35 as a basis?

A. That would depend on the circumstances of the over-all picture at the time I received such cost change.

Q. Everything taken into consideration?

A. Yes.

Q. It might have some effect and it might not?

A. Well, it could have.

Q. Let us assume they furnished you a figure of $1.50 a case on the salt, would that have had any effect

3361 on the retail prices?

A. The same condition would be true, it would depend on the over-all picture.

Q. How often do you advertise Morton's round package salt?

A. I could not answer that without referring to the record.

Q. When was the last time you advertised it?

A. Morton's salt? I could not answer that specifically I think it was advertised on the last weekend.

Q. Last Saturday?

A. Last Thursday and Friday. I would have to refer to my record to confirm that. You see, we have so many commodities and different commodities advertised each week that I cannot remember all of them and say they are advertised.

Q. Well, is salt advertised every three weeks, every four weeks or every six weeks or how often?

A. There is no definite advertising schedule on Morton's salt.

Q. Did the fact that this hearing was to be held today have any effect on advertising last Saturday?

A. It did not.

Q. How much money does the Morton Salt Company pay your company for advertising that product?

Mr. McBride: I object to the question, Mr. Examiner. It is predicated on no facts in the record whatso-

3362 ever.

Trial Examiner Purcell: And you object to it as to form? Is that right?

Mr. McBride: Yes, sir.

Trial Examiner Purcell: Sustain the objection as to form.

By Mr. Haslett:

Q. Does your company receive any compensation from the Morton Salt Company for advertising the round package salt?

A. Not to my knowledge.

Mr. Haslett: I think that is all, sir.

Mr. McBride: I have no further questions.

Trial Examiner Purcell: The witness may be excused. Thank you very much, Mr. Clanton.

(Witness excused.)

3364 W. C. MOSELEY was thereupon called as a witness for the respondent and, having been first duly sworn, testified as follows:

Direct Examination by Mr. McBride.

Q. Mr. Moseley, will you state your name and address for the record, please?

A. W. C. Moseley. You mean my business address or home address?

Q. Home address.

A. 202 Campbell Road, Atlanta. I am with the Colonial Stores.

Q. Are you presently connected with the Colonial Stores?

A. Yes.

Q. That is a corporation, is it?

A. Yes.

Q. And where is your office?

A. Atlanta, for the Southern Division.

Q. By the "Southern Division", what do you mean by that, Mr. Moseley?

3365 A. Well, we have, the Colonial Stores cover four states, that is, Georgia, South Carolina, North Carolina, and Virginia. The Eastern Division's headquarters are at Norfolk, for North Carolina and Virginia.

Q. And the Southern Division of Colonial Stores is South Carolina and Georgia, is that correct?

A. Yes.

Q. And you are with the Southern Division with offices here in Atlanta?

A. Yes, I am here with the Southern Division.

Q. Now, the questions I will ask you, Mr. Moseley, I will just ask you to confine your answers, then, to the Southern Division, without respect to the Northern Division.

What is your present position with Colonial Stores?

A. Well, I am in charge of retail store operation for the super markets known as "Big Star".

Q. Does the Colonial Stores operate any other type of store, other than the super market?

A. Yes.

Q. Will you describe what they are?

A. We operate the Rogers Stores, what we call the counter-type stores, or conventional stores. We also operate the Little Star Stores, which are self-service stores patterned after the Big Star, except on a small scale.

Q. And your position is as sales manager of the
3366 Big Star Stores, is that correct?

A. Yes.

Q. How long have you held that position?

A. Since the first store opening; that was in July, 1937.

Q. You have held that position continuously since July, 1937?

A. Yes, sir.

Q. Your present position?

A. Yes, sir.

Q. Were you connected with Colonial Stores prior to July, 1937?

A. Yes, I have been with them since December, 1920.

Q. What was your position immediately prior to July, 1937?

A. Well, I was Acting Vice President in charge of retail store sales. That was during the absence of our vice president who was ill. I was in that capacity for about a year. Prior I had been assistant.

Q. And how long had you been his assistant?

A. Since 1932.

Q. Will you describe, Mr. Moseley, briefly, your duties as sales manager of the Big Star Stores?

A. Well, I don't hardly know where to start. I am in charge of retail store operation, which, of course, includes personnel, and I have been pretty busily engaged in an expansion program, that is, in selecting locations and
3367 closing leases for locations. I guess that just about covers it.

Q. Do your duties entail anything with respect to the fixing of retail prices?

A. Well, yes, they have. Not so much now as they did to start with, because when I started with one store, I would stick to all of the retail prices. I did that, I believe, for about two or three years, until we got quite a number of stores, and then I had to keep on adding to the system and I have a sales manager in the office right to the present time who fixes some of the retail prices.

Q. And he is under your jurisdiction?

A. Yes.

Q. That is, you direct him?

A. That is right.

Q. When was the first Big Star Store opened? Is that the one you referred to in July, 1937?

A. Yes, that was opened on the 5th day of July, 1937, in Griffin, Georgia.

Q. Where was that opened?

A. Griffin, Georgia.

Q. Griffin, Georgia?

A. Yes, that is about 40 miles south of here.

Q. At the time that store was opened, did you fix the price or any of the prices on any of the commodities 3368 stocked in that store?

A. Yes, I fixed them all.

Q. Do you recall, Mr. Moseley, whether or not there were any salt items stocked in that first store?

A. Oh, yes, we had salt in the store.

Q. Will you describe what those salt items were, if you can recall them?

A. I am afraid I could not describe all the brands of salt we might have had. We have always carried what we call a cheap salt or a standard package salt which retails mostly on a price proposition. Sometimes we had one or two brands in the stores. I would not remember every one, but we have always stocked Morton's salt. We have, in fact, I would not say ever since I have been with the company, but I know ever since we have had Big Star Stores, we have had Morton's. I believe when we stocked this Big Star Store, we had a package from Jefferson Island, what you might call an in-between package, between the price of Morton's and the standard priced salt; a little square package.

Mr. Haslett: Mr. Examiner, may I inquire of counsel just what period he is testifying to now?

Mr. McBride: I believe, Mr. Examiner, my questioning was confined to the opening of the store in Griffin, Georgia.

Trial Examiner Purcell: I so understood. That 3369 was in 1939.

The Witness: 1937.

Trial Examiner Purcell: 1937, at which time he fixed all the prices.

By Mr. McBride:

Q. Do you recall that you carried Morton's round package at that time?

A. Yes, we had Morton's round package salt.

Q. With respect to the current operations of the Big Star Stores, can you describe the packages of table salt that are currently being carried in your Big Star Stores?

A. Yes, we have Morton's round package, both in plain and iodized. We have a package of salt put up by the International Salt Company, called Sterling Salt, in a round package similar to your package, the Morton Package, and that is in plain and iodized. Then, I am not sure just the salt we have right at the moment for the cheaper salt. That varies from time to time, and, as I said awhile ago, we may have two or three brands of standard salt.

Q. When you say similar package, what do you mean?

A. I should have said a square package, I imagine, to keep it straight. That is the salt that sells, ordinarily, as the price proposition, or a pretty cheap price. I think at the present time that sells for about two for 7 cents, or four cents for one. I don't remember just the one we
3370 have now. Sometimes we will have one and sometimes another.

We also have Jefferson Island salt at the present time in the hexagon package. I think that is all of the package salt we have.

We carry salt in 10 pound bags, and that is table salt also.

Q. How many super markets or Big Star Stores do you have in the Atlanta Division?

A. Big Star Stores?

Q. Yes.

A. Thirteen—oh, no, in the Southern Division?

Q. In the Southern Division.

A. Forty, 13 in Atlanta.

Q. And you referred to the Little Star Stores, I believe?

A. Yes, that is a self-service store that operates on the same basis as the Big Star, as far as prices are concerned, but not with as much variety.

Q. And how many of that type store do you have in the Southern Division?

A. 33.

Q. And then you have the counter type, conventional type store?

A. Yes.

Q. How many of those do you have in the Southern Division?

A. I believe that is 220.

3371 Q. 220?

A. 220, I believe, is correct.

Q. Do you know, Mr. Moseley, what the price of Morton's salt in the round package is in the conventional type store at the present time?

A. Yes, I believe it is 9 cents per package.

Q. And how much is it in the Little Star Store at the present time?

A. That would carry the same price as the Big Star. I believe that price in the City of Atlanta is 7 cents; I believe it is.

Q. Does it carry a different price in the Big Star and Little Star Stores in places other than Atlanta?

A. Yes.

Q. Will you describe what those other prices are?

A. We have an operation out of the Greenville Warehouse in South Carolina. I think that price there is 7½ cents, and I believe our price in the extrene Southern part of Georgia, down near the Florida line, in that zone, is 8 cents.

Q. Is the 9 cent price in the conventional type store standard throughout the Southern Division, or are there variations in that price?

A. I am not sure about that, sir. I think it is 9 cents. I know it is 9 cents in Atlanta.

3372 Q. So far as you recall, that is the price in the 220 conventional type stores?

A. I believe it is. I am not positive of that, though. I would not like to make a positive statement, but, I am sure about Atlanta, because I remember that. I am sure about the Atlanta price, but I am not positive about it being all over, but I think it is.

Q. Do you know the cost of Morton's blue package at the present time, per case, Mr. Moseley?

A. I think it is $1.50 per case.

Q. $1.50?

A. Yes.

Q. Do you know whether that has been the price for some time?

A. I believe it has, sir. I don't remember any cost change in there.

Q. At the time you opened the first Big Star Store in Griffin, Georgia, in July, 1937, do you recall what the price of Morton's blue package, round package, was in the conventional type store at that time?

A. No, sir, I am sorry.

Mr. Haslett: May I hear that question again?

Trial Examiner Purcell: Read the question, please.

(Question read.)

The Witness: I would be afraid to say. I don't
3373 remember.

By Mr. McBride:

Q. Were there any competitors around or near Griffin, Georgia, that you recall, Mr. Moseley, who were operating superservice stores for retail grocery items at the time you opened your super store in Griffin, Georgia?

A. No, sir, we opened this super store in this section of the country.

Q. And by this section of the country, precisely what section do you mean?

A. Well, in the area, in which we operate.

Q. That is South Carolina and Georgia?

A. Yes, sir.

Q. Will you describe what procedure was followed by you, Mr. Moseley, in pricing the various commodities for retail sales in the super type store when you opened it in Griffin, Georgia?

Mr. Haslett: I object to that, Mr. Examiner, unless counsel defines what he means by "procedure", whether it is accounting procedure or pricing procedure, or what type procedure it was.

Trial Examiner Purcell: Let me have the question.

(Question read.)

Trial Examiner Purcell: I think that that question is all right. It is the same type question that has been
3374 put to other witnesses. Objection overruled.

The Witness: Well, of course, we had a price structure on our conventional type stores as a guide. We used that to some extent in arriving at our price struc-

ture on the various commodities. Of course, when we first started this super store, it was somewhat of an experiment, and we did not know exactly where we were going to land in respect to gross margin, because we did not know exactly what effect reducing prices would have on volume and you might say it was somewhat of a guess when we set prices, because, as I said a moment ago, we had this retail price list constantly in front of us at the time we established our super market price structure.

Q. Did you have any particular factors in mind, aside from the gross margin which you wished to realize, and aside from the price list in the conventional type store, in your super market store when you opened it in Griffin, Georgia?

A. Well, I don't know if this answers your question or not. We had made a study of super market operation in various sections of the country, including the eastcoast around New Jersey and New York, and also out in Texas where these markets were already in operation, and we had had an idea that the expenses of these stores could be reduced considerably, of course, and we used that, kept that in mind, of course, in establishing our retail prices. In most cases, the prices were considerably less in the self-service stores, the self-service markets.

3375

Q. When you say the expenses could be considerably reduced, in relation to what do you refer?

A. To our conventional type stores.

Q. You mean the expenses per store in absolute dollars, or expenses per sales dollar basis?

A. Well, per sales dollar.

Q. After the super market was opened in Griffin, Georgia, did you make any study with respect to either volume or expenses, or any other of those factors, which you have just described?

A. Yes.

Q. Will you describe what studies were made with respect to volume?

A. Well, we made—

Mr. Haslett: Am I to understand these are studies he made? When you say "you", what do you mean by "you"?

Trial Examiner Purcell: Let Mr. McBride clear up the point, please.

Mr. McBride: Let me ask another question or two here to make that clear, Mr. Examiner.

Trial Examiner Purcell: Very well, sir.

3376 By Mr. McBride:

Q. These studies to which you have just testified, were they made by Colonial Stores with respect to the Griffin, Georgia, operation, Mr. Moseley?

A. Yes.

Q. Did you personally have anything to do with those studies?

A. I did.

Q. Will you describe what the studies were and what your participation in them was?

A. Well, the first thing we did, in fact, I did this myself, I took an itemized physical inventory of the stores. As well as I recall, it was on a thirty-day basis for several months, and in order to determine the movement of various commodities, and also to determine the exact amount of gross margin that we were generating, the profits we were making—I will put it in that language, or generating.

Q. And that study was made on the basis of repeated 30-day inventories?

A. Yes.

Q. And that was done for how many months?

A. I don't recall exactly, possibly six months.

Q. Were those reports returned to you, Mr. Moseley?

A. They were.

Q. Did you study those reports?

3377 A. Yes.

Q. Were any salt items included on that report?

A. Well, yes, salt is included. Not entirely by itself, but in a classification with a few other items, similar items. I believe it is included with salt, baking powders, and items like—it seems like there is something else in there—soda, salt and baking powder; whatever comes in under that one classification.

Q. That is, it was grouped that way for the purpose of the volume study to which you just referred?

A. Yes.

Mr. Haslett: Mr. Examiner, if you please, I want to make a motion to strike the testimony of this witness in regard to the survey made. On his own statement, salt was

not segregated, and we are interested only in salt. He has included baking powder and other commodities.

Trial Examiner Purcell: I will reserve my ruling on that objection at the present time. You may reserve your right to strike. You may proceed, Mr. McBride, and let me know what you develop.

Mr. McBride: And I take it that I can make my argument later.

Trial Examiner Purcell: That is right.

Mr. McBride: Will you pick me up, Mr. Reporter, please?

3378 Trial Examiner Purcell: Give counsel his connection, Mr. Reporter.

(Record read.)

By Mr. McBride:

Q. Was that study made with respect to all commodities in the super market at Griffin, Georgia, Mr. Moseley?

A. That was made in respect to all grocery items.

Q. All grocery items?

A. Yes. It did not include fresh meats or fresh fruits and vegetables.

Q. And what was the purpose of making that study?

A. Well, it was to determine the amount of gross profit we were making.

Q. Was there any study made with respect to cost factors in the Griffin, Georgia, market by the Colonial Stores?

A. Of course, each item, the cost had to be returned on each item in order to determine the amount of profit we were making.

Q. I should have said overhead. Was there any study made at the time the Griffin, Georgia, super market was opened, with respect to overhead expense?

A. Yes.

Q. That was made by the Colonial Stores, was it?

A. Yes.

Q. Did you have any participation in that expense study?

3379 A. Yes.

Q. Will you describe how you made your expense study and your participation in it?

A. Well, we made a cost study, first, of labor in the self-service stores vs. counter type stores—

Mr. Haslett: Mr. Examiner, I don't think this witness

is competent to testify as to cost studies made, unless he actually made the cost studies himself, and I think I would like to take him on the voir dire as to his qualifications.

Mr. McBride: I think the witness should be permitted to finish his answer, and it might come out what participation he had in this.

Trial Examiner Purcell: Yes, that is the very reason I did not rule on your former motion to strike, Mr. Haslett. Let us give counsel for the respondent an opportunity to qualify his witness, if he can, and your motion to strike will be entertained at the proper time.

Give Mr. McBride his connection, please, Mr. Reporter.

(Record read.)

By Mr. McBride:

Q. Will you continue with your answer, Mr. Moseley?

A. We also made, or at least our traffic depart-
3380 ment had to furnish us with the information of the cost of delivery to the super market in truck load quantities vs. small quantities. As an explanation of that, it will take four or five stores to unload a load of merchandise, of the conventional type, whereas the super store will take the merchandise in truck load quantities, one stop. I think those are the principal studies that we made; the delivery cost, and, of course, the labor cost.

Q. And you say the delivery costs were furnished by the traffic department of the Colonial Stores?

A. Yes.

Q. Who furnished the labor cost, Mr. Moseley?

A. Well, the labor cost, I could get myself. I did not have to have anyone furnish that. Their cost of help in the stores comes across my desk each week, that is, duplicates of the store payroll, which, of course, gave me that information.

Q. And that was the information which you used in connection with this labor cost study?

A. Yes.

Q. With respect, now, again, to the study made of the volume in this super market, who took the inventory at the end of each 30 days in the Griffin, Georgia, super market?

A. I did, sir.

Q. You took the inventory yourself?

3381 A. Yes, sir.

Q. And you compiled all the figures that constituted the figures on volume?

A. No, sir, I did not compile the figures. We have a retail accounting department that compiled all the figures.

Q. They compiled all the figures on the inventory which you personally took?

A. Yes.

Q. And did the compilation made by the retail accounting department come to you in finished form?

A. Yes.

Q. And was it that final tabulation which you studied, to which you made reference a few questions back?

A. Yes.

Q. At the time you opened the super market in Griffin, Georgia, was there fixed in advance a gross margin of profit which you hoped to realize in that particular store, or was that simply to follow its course from the operation of that store?

Mr. Haslett: Objected to as leading.

Trial Examiner Purcell: Sustained.

By Mr. McBride:

Q. Mr. Moseley, at the time the super market in Griffin, Georgia, was opened, and prior thereto, had Colonial Stores arrived at any policy with respect to gross
3382 margin of profit for that store?

A. Yes, we had set a projection which we had hoped to attain in this store, including gross margin and labor cost.

Q. After the store had been opened, were you able to ascertain whether or not the original policy with respect to gross margin and labor cost had been achieved?

A. I don't remember exactly. We were very well pleased with the outcome, because we continued on our expansion program. That was the test store. I think, if I remember correctly, we almost achieved the goal we went after in both respects, with respect to labor cost and gross margins.

Mr. Haslett: I move that the last answer be stricken as not responsive to the question.

Trial Examiner Purcell: Motion denied.

By Mr. McBride:

Q. At the present time, Mr. Moseley, are there price differentials observed in the general line of commodities

between the Big Star Stores and the conventional type stores?

A. Yes.

Q. Will you explain why those price differentials are maintained?

Mr. Haslett: I object. The same objection I had this morning.

3383 Trial Examiner Purcell: I think that this question is in a different form. Let me have the question.

(Question read.)

Trial Examiner Purcell: Isn't it substantially the same question, Mr. McBride?

Mr. Haslett: It certainly is.

Trial Examiner Purcell: I have already ruled on that twice; perhaps three times.

Mr. McBride: Mr. Examiner, before making your ruling in this case, we have a gentleman here who is testifying with respect to a particular study having been made in their first super market. He has testified at the time that super market was opened, that the commodities were priced lower than the conventional type store. He has testified as to the factors which went into it.

Counsel for the Commission has been considerably concerned with this same type of question which is now before the witness. It has come up before, about studies and surveys, which we think are relevant, but that is beside the point now.

We have the outline of evidence which I have just stated. I think it is even more proper than ever before, although I don't think it was proper before to ask this type of question, and this witness should be allowed to answer the question as propounded.

3384 Mr. Haslett: I would like to ask him on the voir dire. I don't think he has been qualified.

Trial Examiner Purcell: Has your examination of this witness proceeded to the point where you can turn him over on the voir dire, as requested by counsel?

Mr. McBride: I will take the Examiner's ruling now as far as that is concerned.

Trial Examiner Purcell: All right, take the witness on the voir dire.

(Examination on the voir dire by Mr. Haslett as follows:)

By Mr. Haslett:

Q. Mr. Moseley, you testified that certain reports were prepared by Colonial Stores, Inc., when you opened the super market back in 1937, in July. What department of the Colonial Stores made that survey?

A. You mean who rendered the report?

Q. Who made the survey.

A. Well, we have a retail accounting department.

Q. Have you anything to do with the retail accounting department?

A. No, I don't have anything to do with the retail accounting department.

Q. When was the last time you saw these reports?

A. Oh, that has been sometime ago. Are you
3385 speaking now of the Griffin, Georgia, report?

Q. Those reports you have been testifying to?

A. It has been some time since I saw them.

Q. Would you say several years?

A. Well, not several years. I have reviewed them, possibly, in the last two or three years.

Q. And you are testifying from memory of those reports?

A. Yes, sir.

Q. And you say you have nothing to do with the retail accounting department?

A. No, sir.

Q. Are you an accountant yourself?

A. No, sir.

Q. Are those reports available for the Commission?

A. I imagine they would be, if they could be found in the files, sir.

Q. Did you participate in the preparation of the actual survey?

A. Yes, I did, to the extent of taking the physical inventory and bringing it into the accounting department.

Q. That was your only participation?

A. That is right.

Q. That is the inventory that the clerks take every year at the close of business?

A. Our clerks do not take inventory each year—
3386 Q. I mean on the accounting?

A. They do not make a physical inventory at the end of each year, they take an itemized count, but this was an itemized inventory listing each item by brand and size.

Q. How many stores were taken into consideration in preparing this survey?

A. Well, we only had one store at that time, Big Star Store.

Q. Did you also make a survey of the conventional type stores at that time?

A. Well, no, not a special survey. We have a monthly report, profit and loss report turned out monthly on each store.

Mr. Haslett: Mr. Examiner, I think the examination on the voir dire shows conclusively that Mr. Moseley is not competent to testify as to whatever differential may exist. He did not participate in it. He only took the inventory, and he hasn't seen it for the last two or three years, and is testifying only from memory.

Mr. McBride: Mr. Examiner, this survey was made after the opening of the first super market, and the witness has testified as to how he personally set the prices in that first super market. He has testied as to the goal that they were endeavoring to achieve by way of merchandising policy, he testified to the procedure that was followed in 3387 taking the various elements into consideration. He personally took the inventory and those figures were studied by him at that time, and the mere fact that he has not had occasion to study them since, does not disqualify this man by a long shot.

As far as the retail accounting department is concerned, his questions on that point and answers were that they simply compiled the report to him of certain expenses, and, as far as the traffic department is concerned, it compiled a report to him of certain traffic expenses, expense items, and as far as the labor cost is concerned, this man told us they go directly over his desk. I don't know what more a man needs to do in testifying about this survey. That is the way all surveys are made and that is the way all surveys are put together.

Mr. Haslett: Mr. Examiner, I think it is obvious from the voir dire of this witness that he is not qualified sufficiently, as he did not participate in it, and he don't know what went on in the inventory after the count of the commodities on the shelves. He is testifying as to a lot of things that happened three years ago, or happened in 1937, five years ago, or over five years ago. What we are interested in here are the facts and the Commission is entitled

to have those things, and have them made available to it.

3388 Trial Examiner Purcell: Mr. Haslett, I am satisfied that the voir dire shows this witness is not competent to testify as to the result of the survey he is attempting to testify to.

If you will renew your motion to strike, I will grant it.

Mr. Haslett: I move to strike all of the testimony of the witness with regard to the merchandising functions, inventories, and surveys, made at the opening of the super market in Griffin, Georgia, in July, 1937.

Trial Examiner Purcell: The motion is granted. You may have an exception, Mr. McBride.

Mr. McBride: May we have about a three or four minute recess?

Trial Examiner Purcell: Yes, five minutes.

(Whereupon, a short recess was taken.)

Trial Examiner Purcell: On the record.

Mr. McBride: I think I have an exception and reservation of the right to take this to the Commission?

Trial Examiner Purcell: Yes.

By Mr. McBride:

Q. Mr. Moseley, what was the price placed on Morton's blue package in the Griffin, Georgia, super market at the time it was opened in July, 1937?

A. To the best of my memory it was 7½ cents per

3389 package.

Q. What were the factors which you took into consideration in arriving at the 7½ cent price?

A. Well, of course, we took into account the lower cost of operation.

Q. What do you mean by the lower cost of operation?

A. Well, the lower cost of operation in the larger volume store, as a whole, reduced labor cost on account of self-service, and the reduced delivery cost on account of solid truck loads to one store.

Q. Were those same factors, or were there other factors which were taken into consideration in setting other prices on other commodities at the time you opened the super market in Griffin, Georgia?

A. Let me ask you to repeat that.

Trial Examiner Purcell: Repeat the question, Mr. Reporter.

(Question read.)

The Witness: They would be the same factors.

By Mr. McBride:

Q. I believe you testified, Mr. Moseley, that subsequent to opening the super market in Griffin, Georgia, you had charge of the fixing of retail prices for some two or three years in the super markets opened subsequent to that particular one in Griffin, Georgia, is that correct?

3390 A. That was a period of about one year.

Q. In fixing your prices in those subsequent super markets during that one year period, what factors did you take into consideration in fixing those prices, referring, now, to all commodities?

A. Well, we would, of course, know how much gross profit we had to have to pay off, and naturally there is no set formula in setting prices on any individual item, as I have ever been able to find out. Of course, after you have started, you know just about what you are going to generate in the way of gross margin each month, and you know about what your cost of operation is, and you take those factors into consideration in setting retail prices, as well as competitive prices in some instances.

Q. And did you take other factors into consideration during that year or so subsequent period when you were opening more super markets?

A. Oh, yes.

Q. And were those factors taken into consideration on these subsequent super markets with respect to Morton's round package?

A. Yes.

Q. How are prices fixed at the present time with respect to commodities handled through the super markets?

Mr. Haslett: I object to that. He testified

3391 he does not fix prices at the present time?

Trial Examiner Purcell: I think that is his testimony, Mr. McBride, isn't it?

Mr. McBride: On the contrary, Mr. Examiner, he testified that he has certain duties at the present time; that he has not actually been the sole fixer of prices in the super markets subsequent to this first year or two; that he has certain assistants who are under his jurisdiction. I take

it it is competent for this witness to explain how prices are fixed in these super markets under his jurisdiction at the present time.

Mr. Haslett: I don't agree with that conclusion at all. I don't know whether the witness is competent to testify.

Trial Examiner Purcell: Then, too, there might have been a decided change in policy through the years. Maybe you can qualify your witness better, Mr. McBride. If he is at present engaged in the fixing of retail prices, let him testify to that as a fact. If he is not, let him testify as to just what his functions are in connection with price fixing and let us know too how much of the details he understands in order to fix the prices if, in fact, he does so fix them.

Mr. McBride: What is the disposition of the objection, Mr. Examiner? Will it be held in abeyance?

3392 Trial Examiner Purcell: Yes, I anticipate if that is not done, the objection will be renewed. I will hold my ruling in abeyance for the time being as I did on the motion to strike when it was originally made.

By Mr. McBride:

Q. Do you know, Mr. Moseley, who determines the fixing of prices in the super markets at the present time?

A. Well, at the present time, there are very few changes occurring due to the fact that a majority of the prices are ceiled.

Q. Put the question this way then: you may step back just prior to the OPA to which I presume you had reference to in your last answer?

A. Yes.

Q. Prior to the advent of the OPA, which creates, apparently, an artificial situation, do you know who fixed the prices in the super markets?

A. Well, prices were fixed, principally, by Mr. Geiger, and Mr. Garner, who is in my office and working under my supervision.

Q. What is Mr. Garner's official capacity, if you know?

A. He is sales manager for the Big Star Stores.

Q. And he is your assistant?

A. Yes.

Q. And Mr. Who, who is the other gentleman, you mentioned?

3393 A. Mr. Garner.

Q. What is his official capacity?

A. He is directly under my jurisdiction. He and Mr.

Geiger work together. He is the sales manager for our Rogers or conventional type stores.

Q. Do you have any participation with Mr. Geiger and his associate with respect to fixing prices at the present time in the super markets, still eliminating the OPA?

A. Yes.

Q. Will you describe to what extent you participate in that activity?

A. Well, a list is kept of cost changes coming through, which would justify reductions or advances in retail prices.

Mr. Haslett: I move to strike the last answer as not being responsive. He wants to know what participation he has in the fixing of prices.

Trial Examiner Purcell: Yes, there have been several answers that have not been exactly responsive.

The Witness: Well, I haven't finished—

Trial Examiner Purcell: One second, please. Let me have the last question.

(Last question read.)

Trial Examiner Purcell: The question is, will you describe your participation?

The Witness: Well, those cost changes come
3394 through, and if the advances or reductions are what they term in line, not abnormal, they make the adjustments. If I am there, those adjustments come to my attention before they are put into effect. If I am absent from the office, it is possible that those adjustments will be put into effect and called to my attention upon my return, and if I don't believe they are in order, they can, of course, be changed.

Q. When you refer to "they", do you mean Mr. Geiger and his associate?

A. That is right.

Q. Where do these cost lists come from, if you know, Mr. Moseley?

A. Yes, they come from our buying department.

Q. And are they presented to you for consideration in the matter which you have described?

A. Yes.

Q. Do you confer with Mr. Geiger and his associate, or either of them, with respect to fixing the prices or changing prices from time to time?

A. Yes. As a general rule, at least once a week all work is reviewed, and sometimes oftener, and price changes are reviewed also, at least on a weekly basis.

Q. And you participate in it directly if you are in town, or review it on your return, is that it?

3395 A. Yes, sir.

Q. Will you state, Mr. Moseley, what factors are currently taken into consideration in fixing or changing prices in the super markets?

Mr. Haslett: I object to that, Mr. Examiner. I think the witness has demonstrated that he is not qualified to testify to that, or to answer that question. The other two gentlemen fix prices. They have all these various matters which are taken into consideration by them in arriving at the retail prices, and this gentleman, on occasion, and it may be very sporadic, reviews their work, and if he is not there, the prices are effective. They are the gentlemen who can testify to that question, and not Mr. Moseley.

Trial Examiner Purcell: Subject, however, to his approval upon his return to the city, and, as Mr. Moseley has testified, if they are not correct, why, the prices are set back into the cost bracket.

The Witness: Yes, sir.

Trial Examiner Purcell: I will overrule your objection. Now, give the witness his last question.

(Question read.)

The Witness: Well, the first consideration would be a change in the cost price, and I would say that that is the principal consideration.

3396 By Mr. McBride:

Q. Could there be any other or additional factors considered?

A. Well, yes, sir, competitive conditions would be taken into consideration.

Q. Would transportation costs be taken into consideration?

A. Yes.

Q. Any change in transportation costs?

A. Changes in transportation would, yes. Of course, we have our regular transportation cost, and if there should be a change, why, they would come in, yes, and be in the cost, yes, sir.

Q. Are those the same factors that have been employed with respect to the retail pricing of commodities from the time you first opened your super markets to the present time?

A. Yes, with the exception, possibly, of trying some

merchandising angles on unit prices, or maybe trying to get an item into a popular price class.

Q. What do you mean by "A popular price class", Mr. Moseley?

A. Well, for example, I would say if an article was retailing for 11 cents, it might be to advantage to reduce it back to 10 cents to get it to a popular price class.

3397 Q. Have you or your assistant had occasion to review the price of Morton's blue package at any time since it was originally fixed in the Griffin, Georgia, super market?

A. I don't recall whether we have or not, sir.

Q. Referring now, to the monthly inventory that was taken for the first few months in the Griffin, Georgia, super market immediately after it was opened, will you tell what the purpose was for taking that monthly inventory?

A. It was to determine the amount of gross profit being made at that particular time.

Q. What was the purpose in obtaining from the traffic department, still referring to the Griffin, Georgia, original operation, the figures on transportation cost?

A. To determine the difference in unloading by truckloads and piece loads.

Q. Will you state the purpose, still having reference to the Griffin, Georgia, original operation, for calling upon the retail accounting department for such expense items as you received from that department?

A. Well, the purpose was to determine the delivery cost, as far as the traffic was concerned, and the purpose was to determine the amount of gross profits we were earning.

Q. Was that the same reason for your having reviewed the labor cost that went over your desk?

A. Yes.

3398 Q. Have you ever been engaged in the retail business of selling salt items only, Mr. Moseley?

A. No, sir.

Q. Have you ever heard of a retailer who has?

A. No, sir.

Q. In your pricing policies, do you consider each type of commodity separately, or do you consider that commodity in terms of all commodities handled by your retail outlet?

A. Lots of commodities have to be considered separately.

Q. Would salt be one of those commodities?

A. Well, I hardly think so; not necessarily so.

Q. What distinction do you draw, if you can, between the type of commodity that has to be considered separately, and that which is considered in connection with the entire retail operation?

A. Well, in the grocery business in this area it has been customary I guess is the answer to that for certain commodities to be sold at a very narrow margin. Would you like for me to name some of those commodities?

Q. If you can, by way of illustration only.

Mr. Haslett: Mr. Examiner, just a second. I have been sitting here for one hour and twenty minutes listening to this testimony, and I am still wondering what it has to do with price discrimination under the Robinson-Patman
3399 Act. Mr. Moseley has been testifying to economics, and to surveys which he saw five years ago, and we haven't gotten anything yet with regard to price discriminations.

I think this type of testimony is entirely irrelevant, immaterial, incompetent, and highly prejudicial. I think counsel's examination ought to be brought to a close.

Trial Examiner Purcell: I am going to permit counsel for the Respondent to proceed.

Mr. McBride: Is counsel's statement an objection?

Trial Examiner Purcell: I don't think there was an objection. You may proceed, Mr. McBride.

Mr. McBride: Will you read the last question, please, and so far as the witness has gotten with his answer?

(Record read.)

The Witness: Sugar is one of those commodities, and I guess there are quite a few of them. Canned milk, and shortening, butter, is sold fairly—

Trial Examiner Purcell: I think that is enough, don't you?

Mr. McBride: That is sufficient.

Trial Examiner Purcell: May I suggest to counsel that he get down to the subject of salt if he could conveniently, without intending to be rude at all. I have no such intention.

3400 Mr. McBride: Let me say this: I am drawing very close to the end of my examination of this witness, although, with the insistence very much that I have been on the subject of salt throughout my examination.

Trial Examiner Purcell: Very well, sir.

Mr. McBride: You may cross-examine.

Cross-Examination by Mr. Haslett.

Q. I just have a few questions, Mr. Moseley. I believe you testified that cost is the principal factor that is taken into consideration by you and your associate in fixing retail prices?

A. One of the principal factors, yes.

Q. And competition is another one?

A. Yes.

Q. When you say "cost", do you mean the cost which your company pays for the commodity?

A. That is right, sir.

Q. Do you know whether or not your company received any preferential discounts or allowance from the Morton Salt Company?

A. I do not, sir.

Q. You only know of the $1.50 price?

A. Yes.

Q. Now, you testified, Mr. Mosely, that the 7 cent
3401 price or the 7½ cent price that you put into effect at the opening of the Griffin, Georgia, store in 1937 was due to lower cost of operation in that store. How did you know that was lower cost, since you just opened the store, and that was the first store, for the first time?

A. Well, as I stated in the beginning, it was a kind of shot in the dark. We were confident that there would be some saving in labor. We were confident there would be a saving in transportation, but we did not know exactly how much. Of course, naturally, we considered all this in the beginning, and we had to get it behind us until we knew exactly where we were.

Q. You had to have a price and you picked a price hoping that that differential price under the price in the conventional stores would be saved in the cost of operation?

A. Yes.

Q. And that that would help to decrease the differential?

A. It would help to decrease the cost of operation.

Q. I mean the differential between the super market and the regular store?

A. Yes.

Q. How did you arrive at the figure of 9 cents in the regular store? I believe you testified you set that figure, sir?

A. No, I don't think I said I set that figure. I
3402 testified I had been in charge of retail store prices, but I don't remember how long the figure of 9 cents had been on the Morton salt. I don't remember.

Q. You came with the company in 1920?

A. Yes.

Q. Was it in effect at that time?

A. I wouldn't know. I don't remember that far back.

Mr. Haslett: I think that is all, Moseley.

Mr. McBride: I have no further questions, Mr. Examiner.

Trial Examiner Purcell: Mr. McBride, may the Examiner put one or two questions to the witness to straighten out a little kink, perhaps, that exists in my mind with regard to the record?

Mr. McBride: I have no objection.

Trial Examiner Purcell: Mr. Moseley, you testified on direct examination that the item of salt was not segregated, now, but that, on the contrary, it was grouped with soda and baking powder?

The Witness: I think that is correct, yes, sir.

Trial Examiner Purcell: That is all.

Mr. Haslett: That is all. I have no further questions.

Mr. McBride: Mr. Examiner, might I ask just one question in view of your question to the witness?

3404 Trial Examiner Purcell: Yes, indeed.

Redirect Examination by Mr. McBride.

Q. Do you recall, Mr. Moseley, why salt was grouped with baking powder and soda in that particular survey?

A. Well, being a similar item would be one reason, an item that goes along in the store together, and another reason is to simplify our accounting department so that we can work the movements down into classification, rather than to look at individual items.

Q. That classification was made by Colonial Stores for its own surveying purposes?

A. That is right, sir.

Mr. McBride: I think that is all.

Mr. Haslett: That is all.

Trial Examiner Purcell: Thank you very much, Mr. Moseley.

(Witness excused.)

3405 Atlanta-Biltmore Hotel,
Atlanta, Georgia,
Tuesday, November 10, 1942.

Met, pursuant to adjournment, at 10 a. m.

Before:

James A. Purcell, Trial Examiner.

Appearances:

John T. Haslett, Esq., Attorney for the Federal Trade Commission.

L. M. McBride, Esq., 310 South Michigan Avenue, Chicago, Illinois, attorney for respondent.

3406 Mr. McBride: Mr. Examiner, I will call as the first witness on behalf of the respondent this morning, Mr. J. E. Timberlake, Jr.

J. E. TIMBERLAKE, JR., was thereupon called as a witness for the respondent, and, having been first duly sworn, testified as follows:

Direct Examination by Mr. McBride.

Q. Mr. Timberlake, will you please state your name and address for the record, please?

A. J. E. Timberlake, Jr., Macon, Georgia.

Q. What is your occupation, Mr. Timberlake?

A. Wholesale grocer.

Q. And with what company are you connected?

A. Timberlake Grocery Company.

3407 Q. And where is that located?

A. Macon, Georgia.

Q. Are you the same Mr. J. E. Timberlake, Jr., who testified in Macon, Georgia, some months ago for the Commission in this case?

A. Yes.

Q. What is your position with the Timberlake Grocery Company?

A. Vice president and manager at Macon.

Q. Will you describe, Mr. Timberlake, briefly, what your duties are as vice president and manager of the Macon branch of that company?

A. I do practically all of the buying and I am in charge of the entire personnel of the organization, as well as credit manager and do all the verifying and paying of invoices.

Q. Do you have anything to do with the setting of resale prices of the various products?

A. Yes.

Q. Do you do all of that or part of it?

A. I do all of it.

Q. What is the nature of the business of the Timberlake Grocery Company?

A. Service wholesale grocery firm.

Q. And by service wholesale grocery firm, what do you mean?

3408 A. We have salesmen who sell merchandise, who deliver and charge on a weekly or 30-day terms.

Q. How large a territory is covered or served by the Macon branch of your company, approximately, in terms of radius around Macon, Georgia?

A. From 60 to 75 mile radius.

Q. And how many salesmen do you have serving that territory?

A. Five full-time salesmen.

Q. Do you handle the salt products, Mr. Timberlake?

A. Yes.

Q. Will you describe the kinds and brands that you are carrying in the Macon branch at the present time?

A. Do you want all the kinds and brands of salt?

Q. I am primarily interested in what you might term table salt.

A. Well, we handle 36-1½'s Avery, which is a Louisiana mined salt, and 36-1½'s Diamond Crystal, which is a Michigan evaporated salt. We handle the 24 round package Morton's salt. We handle the 36-1½ Sterling salt, and we also handle the 15-4 bags of salt, and the 6-10 flake salt. That would pretty well cover the table salt.

Q. The 24 round package of Morton salt, is that the blue label free running and iodized salt to which you refer?

A. Yes.

3409 Q. Do you handle any Morton table salt items other than the blue package?

A. Yes.

Q. The description of the salt items, the table salt items, that you have just given, is that approximately the variety of table salt items that you normally carry from time to time?

A. Yes, sir.

Q. Do you have any competitors in the Macon territory, Mr. Timberlake?

A. Yes.

Q. Will you describe or list briefly some of the competitors that you have there?

Mr. Haslett: I object to that, Mr. Examiner. All of this is in the record before, and this is just repetition.

Trial Examiner Purcell: I think so, Mr. McBride. All of the witnesses on behalf of the Commission, which the present witness was one, were inquired of very thoroughly as to who their various competitors were. If you insist upon having it repeated in the record, I shall permit it, if you have any particular reason, I mean.

Mr. McBride: May we go off the record?

Trial Examiner Purcell: Off the record.

(Discussion off the record.)

Mr. McBride: I will withdraw the question.

3410 Trial Examiner Purcell: The record will show the question is withdrawn.

By Mr. McBride:

Q. What price are you paying, Mr. Timberlake, for Morton's blue package salt?

A. $1.50.

Q. Has that been the price which you have been paying for it for some time, do you recall?

A. Yes.

Q. What is the resale price which you have on Morton blue package salt at the present time?

A. Our prices vary. We run from $1.60 to $1.70.

Q. And how long has that scale of prices, resale prices, been in effect, do you recall?

A. Since I have been in Macon.

Q. And how long is that, now?

A. Since January 1, 1939.

Q. What are the resale prices, that is, the prices at which you offer to sell to the retail trade of the 1¼ squares, of which you have just given a description, if you can recall the resale prices of them?

A. 85 cents.

Q. That is the 36 1½ pound squares?

A. Yes.

Q. How many items do you carry, in total, as a general rule, Mr. Timberlake, in your entire grocery line, not making allowances now stringencies during the war?

3411

Mr. Haslett: I assume I have a continuing objection to this line of testimony?

Trial Examiner Purcell: Yes. You may answer, Mr. Timberlake.

The Witness: Approximately 3,000.

By Mr. McBride:

Q. That would be the normal number of items that you would carry?

A. Yes.

Q. Do you know, Mr. Timberlake, approximately what percentage of your total gross sales, again without regard to war time stringencies, that would be accounted for by the gross sales of your table salt items, if you can estimate that percentage?

A. You are speaking in dollar volume?

Q. That is the percentage of your total dollar volume accounted for by your total dollar volume of table salt items?

A. From ¾ to 1 per cent.

Q. And the table salt items which you have described, do you know which of them, or which type, accounts for the largest volume, referring, now, only to table salt items?

A. The 36 1½ pound nickel package.

3412

Q. That is the largest volume of salt item, table salt item?

A. Yes.

Q. Does your company have regular customers, Mr. Timberlake, or do you have, for want of a better description, in and out customers or shoppers?

A. Regular customers, the main part of them.

Q. Approximately how much of your dollar volume of business would be accounted for by regular customers?

A. By regular customers I assume customers that we contact each week and have orders from each week, is that right?

Q. Would that be your description of your regular customers?

A. Yes, sir.

Q. Those are the kind I want to know about.

A. I would say they account for fully 90 per cent of our business.

Q. And has that been true for some time?

A. Yes.

Q. In placing the prices on your commodities, Mr. Timberlake, will you state what factors are considered by you in arriving at your resale prices, referring now to general pricing factors?

A. We consider quite a few things in that. The turnover that we get out of any item, first, is considered, or the possible turnover is considered, and the size con-
3413 tainer and weight has a lot to do with it, the selling cost, the cost that it actually takes the salesman to sell it, and also the amount of money involved in that item.

Q. Does the fact that your company offers credit terms to its customers have any part in the pricing procedure?

A. To a certain extent, yes.

Q. You said that you considered the weight and size of the item being priced. What is the purpose of considering the weight and size?

A. We deliver and some items that are very bulky take up a lot of room on a truck, and where there is weight it would necessarily have to be priced a little higher to deliver 50 to 75 miles out in the country.

Q. Do you consider competition in setting any of your prices?

A. Very little.

Q. I believe you referred to volume or turnover, am I correct, as being one of the factors?

A. Yes.

Q. Will you describe or state why you consider turnover and volume in your pricing formula?

A. Well, it only stands to reason that an item that one would turn over 15 or 20 times a year, would afford more profit at the end of the year sold on close margin, than an item of long margin turned over once during that year.
3414 Q. And it is by reason of that theory that you give consideration to turnover and volume?

A. Yes.

Q. Now, in fixing your price at $1.60 to $1.70, which I believe is the range to which you testified, on Morton blue

package, which of those factors which you described, were considered in arriving at that range of prices?

Trial Examiner Purcell: Let me have that question.

(Question read.)

The Witness: We have very low selling costs on Morton's blue package. We enjoy a very nice turnover on this package. It is, relatively speaking, a small case to be handled by our drayman.

By Mr. McBride:

Q. So that in making that price range, those factors were considered specifically, along with the general factors, which you described?

A. Yes.

Q. Will you explain, Mr. Timberlake, why you have a price range of $1.60 to $1.70 on the blue package?

A. In the City of Macon, we have two or three cash and carry houses, who employ no salesmen, and price merchandise very cheap to attract merchants into their stores. We sell Morton's salt in the city at $1.60, and as we move 3415 on out into the territory, our prices go up to $1.65 for the merchants out in the territory who pay their bills promptly, and are full-line customers, and our price of $1.70 we hold to those merchants who are very slow in paying their bills and who might only buy low-margin items from us, bulky items.

Q. You referred to low-margin items, Mr. Timberlake. Are there various margins on various commodities in the list that you handle?

Mr. Haslett: I object to that. What has that got to do with the price of salt? I think it is irrelevant and immaterial to the issues in this case.

Trial Examiner Purcell: Yes, I have already ruled, Mr. McBride, that margins or percentage on other commodities have no place in this inquiry. Not with this witness, but with several others in the past, and I will sustain the objection.

Mr. McBride: Mr. Examiner, can I make a statement first? You have never ruled against me on this, and I am not inquiring as to the margin or the mark-up on the over 3,000 commodities. I am trying to find out what this witness means by a low margin on salt, and the only way I can find out is in terms of whether or not all commodities carry the same margins or otherwise. I don't propose to inquire as to the mark-up on all items.

3416 Trial Examiner Purcell: I thought you were going to start on that line of mark-up. If all you wish to do is to find out that which we know to be a fact, that there are different margins on products, why, you may inquire.

Mr. McBride: I simply wanted to find out whether or not salt fits into the picture.

Trial Examiner Purcell: I said you may inquire.

Mr. Haslett: The last question does not purport to elicit such answer.

Trial Examiner Purcell: That is what led me to rule. I so construed it, but, in the light of counsel's explanation of his theory, he may go ahead.

The Witness: Will you please repeat the question?

Trial Examiner Purcell: Read the question to the witness, please.

(Question read.)

By Mr. McBride:

Q. In other words, all commodities do not carry the same margin or mark-up, is that correct?

A. That is correct.

Q. And the blue package you regard as a low margin mark-up as compared with that on certain other commodities, is that correct?

3417 A. That is correct.

Q. Does your company receive any quantity discounts and allowances on the blue package, Mr. Timberlake?

A. Yes.

Q. How much is that, do you know?

A. Ten cents a case.

Q. What is done with that 10 cent discount, or how is it handled?

A. We have handled it in two different ways. When we get it, I believe semi-annually, it is either handled as a cash sale and run through the books in that method, or handled as a general credit to merchandise.

Q. Now, you say you get it semi-annually. From what source do you receive it semi-annually?

A. The Thomas & Howard Company in Columbia, South Carolina.

Q. Do you know in advance, Mr. Timberlake, whether or not you are going to receive that quantity discount semi-annually, as you describe it?

A. No, sir.

Q. Is the discount, or has it been at any time credited particularly to purchases of Morton's blue package salt, or to your salt account in general?

A. No, sir.

Q. In fixing your price margins on blue package for resale purposes, what cost do you employ, the invoice
3418 price of $1.50, or $1.50 less 10 per cent?

Mr. Haslett: I object to that. It has been asked and answered.

Mr. McBride: On the contrary, Mr. Examiner.

Mr. Haslett: That was the first question, one of the first questions. He said, "What cost do you have on blue package salt?", and he said "$1.50".

Trial Examiner Purcell: That is what he used as a basis, a base point, if I remember the testimony of the witness.

Mr. McBride: Mr. Examiner, I asked him if he knew what it cost, and now I am trying to find out whether, in the terms of setting his resale price—and this is a brand new line of attack by counsel for the Commission—the only thing I want to find out is whether he uses the invoice price of $1.50 or $1.50 less 10 cents, because at the time I asked him whether he used the $1.50, there wasn't anything in the record at the moment as to whether he did or dit not get a quantity discount.

Mr. Haslett: He asked him, Mr. Examiner, what the cost was. Now, "cost" is a great big word, although it only has five letters in it—

Trial Examiner Purcell: Only four.

Mr. Haslett: Well, with the "s" in it, is what I mean. Mr. Timberlake stated it was $1.50.

3419 Trial Examiner Purcell: Let counsel pursue his line of inquiry. I will overrule the objection.

Mr. McBride: Will you read the question, Mr. Reporter?

Trial Examiner Purcell: Read the question to the witness.

(Question read.)

The Witness: The invoice price of $1.50.

By Mr. McBride:

Q. Have you pursued that custom for some time, Mr. Timberlake?

A. All the time.

Q. Have you at any time taken inventory of the commodities carried in your warehouse, including the salt items carried?

A. Twice each year.

Q. In taking inventory, on what basis, in terms of cost or inventory value, do you extend for Morton's blue package salt?

A. $1.50.

Q. Has that been your custom for the past several years?

A. Yes.

Q. You testified a moment ago, Mr. Timberlake, that your price in Macon, the city of Macon, if I understood it, was $1.60, the resale price, on Morton's blue package by reason of cash and carry competition in the city of Macon?

3420 A. Yes.

Q. Do you know the resale prices of the cash and carry sales of Morton's blue package in the city of Macon?

A. It varies. Generally speaking—

Mr. Haslett: The question is, do you know?

Mr. McBride: Mr. Examiner, I object to the interruption by counsel.

Trial Examiner Purcell: That is quite proper, Mr. McBride. Make your objection in the usual form, Mr. Haslett.

Mr. Haslett: I object to the question.

Trial Examiner Purcell: The question is all right.

Mr. Haslett: I object to the answer. He can answer "yes" or "no" to that question, if he knows.

Trial Examiner Purcell: Read the question.

(Last question read.)

Trial Examiner Purcell: You may answer.

The Witness: I would say most of the time it is $1.58.

By Mr. McBride:

Q. And your price in Macon is $1.60?

A. Yes.

Q. Mr. Timberlake, have you ever, at any time, been in the wholesale business of wholesaling salt items only?

A. No, sir.

Q. Have you ever heard of a wholesaler who has been?

A. No, sir.

3421 Q. In connection with the pricing of commodities handled by your company, do you consider each type of commodity, salt, for example, separate and apart from all other commodities, or do you consider them in connection with the entire line handled by your company?

A. We consider each item as to how it fits in with all the other items.

Q. And that would be an additional pricing factor in addition to those which you have previously described, is that correct?

A. Yes.

Q. Mr. Timberlake, do you know of any business which you have obtained on Morton's blue package from any of your competitors in the Macon territory by reason of your having received a quantity discount?

Mr. Haslett: I object.

Trial Examiner Purcell: State the grounds of your objection.

Mr. Haslett: I think it is far beyond the knowledge of this witness whether or not he has received any business from his competitors, due to the fact that he receives a so-called quantity discount of 10 cents per case. He has a price of $1.60 to $1.70. He cannot possibly tell just what business he has received and would receive, as a fact, unless he made a survey and knows of his own knowl-
3422 edge, and then, I would not have any objection.

Mr. McBride: I wonder, Mr. Examiner, if all answers by all witnesses must be predicated on surveys. I simply asked the witness whether he knew or not.

Trial Examiner Purcell: You are not asking him to state as a fact whether he knows or not?

Mr. McBride: No, sir. The question speaks for itself.

Trial Examiner Purcell: Let me have the phraseology of that question.

(Question read.)

Trial Examiner Purcell: The objection is overruled. You may answer.

The Witness: May I have that question back again, please?

Trial Examiner Purcell: Read the question again, Mr. Reporter.

(Question read.)

The Witness: No, sir.

By Mr. McBride:

Q. Do you know of any competitor's prices on Morton's blue package salt which have been lower, by reason of your having received a quantity discount on your purchases of Morton's blue package?

A. No, sir.

3423 Q. Do you know of any competitor in the Macon territory who has abandoned the sale, or offering for sale, of Morton's blue package salt by reason of your having received a quantity discount on that item?

A. No, sir.

Q. Mr. Timberlake, if your company was offering, as it does, Morton's blue package salt at $1.65 a case, and a competitor was offering Morton's blue package salt at $1.65 a case, and the resale prices of both companies were the same, and you were paying $1.50 a case, while your competitor was paying $1.40 a case, would the fact that your competitor was paying $1.40 while you were paying $1.50, under those circumstances, in any way affect your business?

A. No, sir.

Q. Will you state why you give that answer, Mr. Timberlake?

A. Well, the cost of doing business for each house may be separate, mine may be lower than his, or mine may be higher than his, and any extra profit that he might make more than I might make would have no bearing on my business.

Q. Do you know the prices paid by your competitors for all of the commodities that they handle?

A. No, sir.

Q. As far as you know, they may pay more on some items or less on some items that you handle?

A. Yes.

3424 Q. Would that also be true of table salt items?

A. Yes.

Q. You have no knowledge as to what your competitors pay on any of the table salt items?

A. No, sir.

Q. Has there ever been any given time that you know of, Mr. Timberlake, when your resale prices on all table salt items in the Macon house were lower than the resale prices of those table salt items handled by all other competitors?

A. No, sir.

Q. Do you know of any given time when your resale prices of all table salt items were higher in all instances than those of your competitors?

A. Will you repeat the question, please?

Trial Examiner Purcell: Read the question.

(Question read.)

The Witness: No, sir.

By Mr. McBride:

Q. As far as you know you might have been higher on some table salt items and low on others, in terms of your competitor's resale prices, is that correct?

A. Yes.

Q. Would that be true with respect to your resale prices of all commodities in terms of resale prices of your competitors?

3425 A. Yes, sir.

Mr. McBride: You may cross-examine.

Cross-Examination by Mr. Haslett.

Q. Mr. Timberlake, you testified that you knew of no one that was in the salt business only. You did not mean to state that that has never happened?

Mr. McBride: Mr. Examiner, I object to that question, unless counsel reframes it in terms of a company in the wholesale salt business, which is the testimony in the record here.

Mr. Haslett: In the wholesale salt business?

The Witness: I think I said I never knew of any one.

By Mr. Haslett:

Q. You would not say that has never happened?

A. No, sir.

Q. Does your company purchase 5,000 cases of Morton's free running salt in any 12-month consecutive period?

A. I don't know.

Q. You say you don't know?

A. Yes.

Q. You testified in the Commission's case that it did not.

A. That my company in Macon?

Q. Yes, the Timberlake Grocery Company.

A. No, sir, the Timberlake Grocery Company—

3426 Q. Does not?

A. No, sir.

Q. And yet it receives discounts?

A. Yes, sir.

Q. Do you know how many cases of Morton's round package blue label salt was purchased last year?

A. The exact amount, no, sir.

Q. It was less than 5,000 cases?

A. Yes, sir.

Q. Did you know that the Morton Salt Company require that you purchase 5,000 cases before you are eligible to receive the 10-cent discount?

Mr. McBride: If the Examiner please, may I have that question read?

Trial Examiner Purcell: Read the question.

(Question read.)

Mr. McBride: I will object to that because of the ambiguity of the word "you". I will withdraw the objection if counsel wants to say customers of the Morton Salt Company.

Mr. Haslett: I am talking about Mr. Timberlake. He is the gentleman on the stand. When I say "you", I mean Mr. Timberlake's company in Macon, Georgia.

Mr. McBride: Then, we object to it on the other ground whether or not the Morton Salt Company requires

3427 "you", meaning the Timberlake Grocery Company—it is quite obvious, apparently, on that basis that we don't require "you",—

Trial Examiner Purcell: Now, gentlemen, don't let's get into a grammatical discussion here.

Mr. Haslett, would it satisfy the purpose of your question if you substituted the word "one" instead of "you"?

Mr. Haslett: No, sir.

Trial Examiner Purcell: You insist upon it?

Mr. Haslett: Yes, sir.

Trial Examiner Purcell: Is there anything in the record showing that the Morton Salt Company requires the Timberlake Grocery Company to do anything?

Mr. Haslett: There is plenty in the record to show that the Morton Salt Company requires, before any customer is eligible to receive the 10 cent rebate, he must purchase an amount equal to 5,000 cases in a 12-month consecutive period.

Trial Examiner Purcell: That is why I suggested the use of the word "one" instead of "you".

Mr. Haslett: This man is a customer.

Trial Examiner Purcell: I think it is proper for you to show the general rule of the Morton Salt Company requiring that one purchase at least 5,000 cases to be-
3428 come eligible for the discount, but not that the Morton Salt Company requires the Timberlake Grocery Company to do anything; but, by the same token, you can prove and have proved by the witness on the stand the ultimate fact that the Macon branch does not purchase 5,000 cases, and yet it is receiving a discount of 10 cents a case. The objection of Mr. McBride is upheld.

By Mr. Haslett:

Q. Do you know the requirements of the Morton Salt Company in order to be eligible for the 5,000 case discount?

A. Yes, sir.

Q. What are those requirements?

A. On the Morton round package, one must buy 5,000 cases or more during any 12-consecutive months.

Q. And your company doesn't do that?

A. No, sir.

Q. Do you think it is fair that your company should receive a 10 cent rebate on its purchases, while customers who are purchasing close to 5,000 cases, or greater volume that your company does, does not receive any discount?

Mr. McBride: I object to that question for the obvious reason that this witness' opinion as to what is fair or is not fair is not a matter of inquiry in this case.

Trial Examiner Purcell: I will hear from you, Mr.
3429 Haslett.

Mr. Haslett: Mr. Examiner, the foundation has been laid for that question, and I think it is perfectly relevant and material to the case.

Trial Examiner Purcell: Well, what difference does it make to the Commission whether this witness thinks it is fair or unfair. You have the facts. Objection sustained.

By Mr. Haslett:

Q. You stated in the beginning of your testimony that competition played very little part in the setting of your resale price; then, at the end of your testimony, you stated the reason you had $1.60 price on Morton's round package salt was due to the fact that cash and carry competitors were selling at $1.58 a case. Do you want to change your

testimony to state that competition does play an important part in setting the resale price of your commodities?

A. No, sir.

Q. It does not play any part at all?

A. Not an important factor.

Q. Well, why do you sell at $1.60 a case?

A. We have any number of straight line customers in the city of Macon who buy most of their groceries from us, and a 7 cent spread in there, $1.65 to $1.58 might mean that we would lose some good business.

3430 Q. Lose it for what reason, sir?

A. That they would go to the cash and carry houses.

Q. I see, then, competition does play an important factor in the setting of that price, doesn't it?

A. In that one price, yes.

Q. Then, why do you sell at $1.70 a case?

A. When a merchant is slow pay, and if we have to haul it a long way out of town—

Q. Salt is a very heavy commodity, isn't it?

A. Yes, sir.

Q. Very heavy?

A. Yes.

Q. Does competition have anything to do with the $1.70 price?

A. No, sir.

Q. Why don't you sell it at $2.70?

A. We have got to keep our retail merchants in business.

Q. You have to keep them in business?

A. By keeping them competitive with larger stores.

Q. Then, competition has a lot to do with the setting of the $1.70 price, isn't that a fact, sir?

A. No, sir, I don't see where competition can set my price.

Q. Well, if one of your competitors was selling at $1.70 to those customers out in the country, and you had a

3431 $1.70 price, the reason for the $1.70 price is due to the fact that the competitor has that price, isn't it?

A. No, sir.

Q. What would be the reason?

A. The reason would be that the man is slow pay, or due to the fact that we had to haul it out there, or—

Q. How do you arrive at—

Trial Examiner Purcell: Let the witness finish.

Mr. Haslett: Oh, I beg your pardon.

The Witness: (Continuing.) —or if he bought only small profit items from us.

By Mr. Haslett:

Q. Is that a general classification for all customers in the $1.70 class?

A. No, sir.

Q. Do you have another price besides $1.70?

A. $1.65.

Q. Do you have a higher price than $1.70?

A. No, sir.

Q. Why don't you increase your price? How do you arrive at the $1.70 price?

Mr. McBride: If the Examiner pleases, I object to that as repetition. The witness has answered that same question.

Trial Examiner Purcell: Objection overruled.

3432 By Mr. Haslett:

Q. How did you arrive at the $1.70 price?

A. It is just a price I put on it thinking it would show us a better margin to help to carry some of those slow paying accounts, or to help pay increased cost delivery out to the territory.

Q. How long has the $1.70 price been in effect?

A. Ever since I have been in Macon.

Q. Was it in effect before you went to Macon?

A. Yes, sir.

Q. Then, you did not set it, did you?

A. No, sir, I set it on my own.

Q. Sir?

A. I set my own price.

Q. Was that $1.70?

A. $1.60 to $1.70.

Q. Were both of those prices, then, in effect before you went to Macon in 1939?

A. I don't remember what prices were in effect.

Q. Don't you know what prices were in effect on Morton's blue package salt when you became vice president and were called down there by your father to run that business?

Mr. McBride: I object to that question. I object to that part of the question which refers to this witness being called anywhere or sent anywhere by his father to run

3433 the business.

Trial Examiner Purcell: The objection to that part of the question is sustained.

Mr. Haslett: Read the question and let him answer it the way it is now.

(Amended question read as follows:)

"Q. Don't you know what prices were in effect on Morton's blue package salt when you became vice president?"

The Witness: Your Honor, may I ask to go off the record while I explain something?

By Mr. Haslett:

Q. I would like to have it on the record. I would like to have your answer to that question.

A. I became vice president of the Timberlake Grocery Company in 1935 and I did not move to Macon until 1939.

Q. When you became vice president of the Timerlake Grocery Company in 1935, did you have anything to do with the setting of the retail prices on Morton's round package salt during the period from 1935 to 1939?

A. No, sir.

Q. Do you know the price of Morton's round package salt at the time you became active manager of the Timberlake Grocery Company's branch at Macon, Georgia, in 1939?

A. Yes, sir.

3434 Q. What were those prices?

A. The prices were the same as they are now, $1.60 to $1.70.

Q. So, you did not set the prices, they were set before you went there, weren't they?

A. Yes, sir.

Mr. Haslett: At this time I move to strike the witness' testimony regarding the fixing of the resale prices of Morton's round package salt, due to his qualifications.

Trial Examiner Purcell: Have you finished with your cross-examination?

Mr. Haslett: No, sir.

Trial Examiner Purcell: I will hear from you, Mr. McBride.

Mr. McBride: I suppose, Mr. Examiner, my views up to now are pretty well given all over the record with respect to this type of motion. I shan't use any more of the record to restate it, except by way of summary. It is indeed a dreary day for a respondent in a Federal Trade Commission hearing if this witness is disqualified from giving any testimony regarding Morton's blue package salt for the grounds stated by counsel for the Commission.

Trial Examiner Purcell: Well, he is not precluded from

giving any testimony, he is precluded on the one ground that he did not, obviously, fix the price on Morton's blue package salt; he had nothing to do with it; he fell
3435 heir to the price, so to speak, if I may use a figure of speech, when he went to Macon. Is that the ground of your objection, Mr. Haslett?

Mr. Haslett: That is right.

Trial Examiner Purcell: The motion to strike is granted.

Mr. McBride: And I take my vociferous exception and make the usual reservation to take it before the Commission.

Trial Examiner Purcell: Very well.

By Mr. Haslett:

Q. Mr. Timberlake, you stated that approximately 90 per cent of your business was done with regular customers who purchased day in and day out, or week in and week out, from your company. Do you remember that?

A. Yes.

Q. Was that just an estimate of your own, sir?

A. Yes.

Q. You say it was an estimate?

A. Yes.

Q. How did you arrive at that estimated figure?

A. We have salesmen calling on these regular customers each week and I see their orders and their statements each week, and also I see the orders and statements of drop-in customers, or any irregular customers, and I arrived
3436 at my estimate in that manner.

Q. You did not make any tabulation of any orders coming over your desk, did you?

A. No, sir.

Q. The same would also be true as to the ½ to 1 per cent of salt items, volume?

A. Yes.

Q. That is just a guess on your part?

A. Yes, sir.

Q. Mr. Timberlake, you stated that the cost of selling entered into the picture of setting resale prices. Now, will you tell me whether the cost of purchasing the merchandise has anything to do with the price, the resale price?

A. Yes.

Q. Is that an important factor?

A. Yes.

Q. Mr. McBride asked you if one of your customers was

purchasing Morton's salt at $1.40 a case and selling it at $1.65 a case, while at the same you were purchasing it at $1.50 a case and selling at $1.65 a case, whether that would, in any way, affect your business, and I believe you answered no, due to the fact that your cost of doing business might vary between you and your competitor. What do you base that answer on?

A. I don't see how, what my competitor, the margin
3437 of profit my competitor might make would hurt my business.

Q. Let us assume, Mr. Timberlake, that the competitor is purchasing for $1.40 a case and selling for $1.50 a case, and you are purchasing for $1.50 and selling for the same price you are purchasing for, what effect, then, would that have on your salt business?

Mr. McBride: I object to that question.

Trial Examiner Purcell: Read the question.

(Question read.)

The Witness: I would be handling that item with no profit at all.

By Mr. Haslett:

Q. And he would be making 10 cents off of it?

A. I don't know what he would be making because I don't know his cost. My business, I am speaking of, would be done with no profit.

Q. I am asking you to assume those facts, where he was paying, buying for $1.40 and selling for $1.50, and you sell for the same price you are purchasing for?

A. Yes.

Q. Then, he would make 10 cents?

A. Yes.

Q. And he could always reduce the price under $1.50 and still make a profit, and you could not do so unless you sold below cost, is that correct?

3438 A. Correct.

Q. So 10 cents has a substantial effect on the salt business, doesn't it?

A. No, sir.

Q. What do you predicate that answer on?

A. Now, you asked me, that first question, you just asked me by an assumption—

Q. Yes, I am asking you to assume those facts.

A. Now, this next question you asked me for still an assumption?

Q. Based on those facts?
A. Based on those facts?
Q. Yes.

Mr. McBride: Mr. Examiner, I lost track of what counsel is asking, so I will object to the last question on the ground that I don't know whether he is talking about the facts as they are, or whether he is talking about some assumption of facts.

Trial Examiner Purcell: It is no basis of objection for counsel to say he has lost track of the cross-examination. You may ask to be enlightened.

Mr. McBride: Then, I will strike that part of the objection, but I will still object to the last question on the ground that it is ambiguous and not susceptible of answer, unless counsel indicates whether or not he is asking
3439 that question based on somewhat of a half dozen set of assumed facts, or on facts as they exist in Macon.

Mr. Haslett: I think the record is pretty clear up to this time. I had a statement of facts which I presented to this witness, and asked him to answer some questions based on that statement of facts. He answered the question, and then, on the same statement of facts I asked him whether or not the 10-cent discount would have an effect based upon the same statement of facts.

Mr. McBride: But that was not counsel's last question. He said before the 10-cent discount does have some effect.

Trial Examiner Purcell: We have had enough of this discussion on the record. Off the record.

(Discussion off the record.)

Trial Examiner Purcell: Back on the record.

By Mr. Haslett:

Q. Mr. Timberlake, I believe you stated, in answer to my question, that if your competitor was purchasing at $1.40 and selling at $1.50, which is the same price you were paying for it, and which was the same selling price that you have, then, that competitor would be making 10 cents, where you would not be making anything?

A. Yes.

Q. Then, if he reduced the price below $1.50, that
3440 you would have to sell below cost in order to meet that competition?

A. Yes.

Q. Then I asked you, based on that same statement of

facts, whether or not the 10 cents would have an effect upon your business, your salt business?

A. Since you have clarified that, I would say yes, it would.

Q. Are you familiar with your competitor's prices on Morton's blue package salt?

A. No, sir.

Q. You are familiar with the cash and carry prices, aren't you?

A. Yes.

Q. They are competitors, are they not?

A. Yes.

Q. I believe you stated it was $1.58 a case?

A. Yes.

Q. Are you familiar with the competitor's prices on Morton's round package salt that are in the same type of wholesale grocery business that your company is?

A. No, sir.

Q. Do you do purchasing for the Thomasville branch of the Timberlake Grocery Company?

A. No, sir.

3441 Q. Do you have anything to do with the operation of that branch?

A. No, sir.

Q. They are the only two branches of the Timberlake Grocery Company?

A. Yes, sir.

Q. And you are vice president of the company?

A. Yes, sir.

Q. Which company owns both branches?

A. Yes, sir.

Q. Mr. Timberlake, you testified in answer to some of Mr. McBride's questions that the 10 cent rebate that you received from the Morton Salt Company on your purchases of round package salt goes into a special account. Is that what you testified to?

A. No, sir, I testified that it was entered as a credit to merchandise, or occasionally it had been entered as a cash sale.

Q. Now, why would it be entered up as a cash sale. It is not a sale, is it?

A. No, it is not a sale, it was just one method of bookkeeping. I don't know why.

Q. And when it is used as a credit to merchandise it reduces the prices of the merchandise?

A. On the total inventory; it is used as a credit 3442 against the total inventory.

Q. And if you purchased 3,000 cases and got $300 back, then, the cost of your inventory would be $300 less, is that correct, sir?

A. Yes.

Q. And I believe you testified that the cost of the commodity, the actual cost of the commodity, is an important factor in setting the resale price. Is that correct, sir?

A. Yes.

Mr. Haslett: I believe that is all.

Redirect Examination by Mr. McBride.

Q. Mr. Timberlake, when was the branch of the Timberlake Grocery Company of Macon, Georgia, opened?

A. January 1, 1939.

Q. Who was the first manager of the branch of the Timberlake Grocery Company at Macon, Georgia?

A. I was.

Q. At the time that was opened on January 1, 1939, did you fix the prices on all commodities?

A. Yes, sir.

Q. Did you fix the prices on Morton's blue package at the time that branch was opened?

Mr. Haslett: I object to that. The question has been asked and answered.

3443 (Discussion off the record.)

Mr. Haslett: I will withdraw my objection.

Trial Examiner Purcell: Let the record show that the objection of counsel for the Commission is withdrawn. And, Mr. McBride, accept my assurances, please, that if your examination should clear up any ambiguity that you think is in my mind, I will have no hesitancy in stating it on the record.

Mr. McBride: That is the purpose of this question.

Trial Examiner Purcell: Or you, Mr. Haslett, as the case may be.

Mr. McBride: May the reporter read the last question?

Trial Examiner Purcell: Read the last question.

(Question read.)

Trial Examiner Purcell: What branch are you referring to?

By Mr. McBride:

Q. Referring to the branch at Macon, Georgia, opened on January 1, 1939, according to this witness' testimony?

A. We bought out an old established firm in Macon, Georgia, named Yates & Tabor Company. We kept their entire sales force. We kept their old sales books and price books, and went through those books making any 3444 necessary changes in prices. Therefore, any prices that we kept, the same as Yates & Tabor, I felt like that I set the prices myself. I condoned that price.

Q. In the price list which you examined at the time of the take-over, do you recall whether or not, Mr. Timberlake, Morton's blue package was among the items on the price list?

A. Yes.

Q. At the time that you examined those price lists, did you examine, among other things, the price of Morton's blue package salt, to review it as to the propriety of the price?

A. Will you repeat the question, please?

Trial Examiner Purcell: Read the question.

(Question read.)

The Witness: I don't understand your question, sir.

Trial Examiner Purcell: That question is clear, it seems to me, Mr. Witness. Mr. Reporter, please read the question to the witness again. I don't see how it can be made very much clearer.

(Question read.)

The Witness: Yes.

By Mr. McBride:

Q. Do you recall whether or not you changed the prices after that review?

A. I did not.

Q. What was the price shown on that list which 3445 you reviewed, the Yates & Tabor list, on Morton's blue package salt, referring now to resale price?

A. $1.65. Yates & Tabor worked their salesmen, however, on a percentage of profit basis, and showed their cost, allowing their men flexibility in sales price, and it was explained to me at that meeting that we held that they varied from $1.60 to $1.70, and we kept the same list price on our book of $1.65 and worked our price from $1.60 to $1.70.

Q. You say it was explained to you at a conference that was held. By whom do you mean when you say "we"?

A. We have a conference with all of the salesmen and the active manager of Yates & Tabor Company at the time we bought them out.

Q. Were you solely responsible for fixing the prices on all commodities at the time the branch was opened on January 1, 1939, at Macon, Georgia?

A. Yes.

Mr. Haslett: I object to that, unless counsel excepts Morton's blue package salt, because the testimony is that he did not fix the price on Morton's blue package salt.

Trial Examiner Purcell: Five-minute recess.

(Whereupon, a five-minute recess was taken.)

Trial Examiner Purcell: Read the last question 3446 and answer.

(Record read.)

Trial Examiner Purcell: The objection is sustained, for substantially the same reasons stated on the same question involved in the motion to strike by Mr. Haslett last heretofore made and granted.

The Examiner notes that, from the testimony of this witness on direct, a number of elements and factors were considered by him in the fixing of other prices for other commodities sold by his firm, and in the instance of the opening of the Timberlake Grocery Company branch in Macon none of those factors, according to the testimony of the witness, were taken into consideration; he merely contented himself with having adopted the price list on Morton's salt, without having made a study or considering any of the factors necessarily entering into such a computation.

Mr. McBride: May I note my exception and reservation of my right to take the matter to the Commission?

Trial Examiner Purcell: Yes.

By Mr. McBride:

Q. Mr. Timberlake, I believe you testified a short while ago that you reviewed the price list of Yates & Tabor with respect to all commodities on that list at the time it was taken over by the Timberlake Grocery Company, is that correct?

3447 A. Yes.

Q. What was the purpose of reviewing the price list of Yates & Tabor, Mr. Timberlake?

A. Yates & Tabor was a very old line concern, noted for their higher prices on all merchandise. Our methods of doing business were not exactly the same. Therefore,

it was necessary to go over the entire price list, and revise it on several items, lowering the prices.

Q. Who was charged with the responsibility of making the review for that purpose, Mr. Timberlake?

A. I was.

Q. Were you solely responsible for that duty?

A. Yes.

Q. In reviewing the price list of Yates & Tabor Company, what factors, if any, did you take into consideration in making your review?

A. I took into consideration the same factors that we have already discussed, possible turnover of the item, selling cost, the size and weight of the commodity.

Q. And did you test each price on each item on that list by those factors?

A. Yes, sir.

Q. Did you change any prices?

A. Yes, sir.

Q. You changed them by reason of having tested
3448 the Yates & Tabor prices on the basis of the factors to which you have just testified?

Mr. Haslett: I object to that as leading. You may ask him why he changed them.

Trial Examiner Purcell: Objection sustained.

By Mr. McBride:

Q. Why did you change the prices on those items on which you did make a change?

A. Because they did not fit into the scheme of my plan of doing business.

Q. Was the price of Morton's blue package shown on that price list of Yates & Tabor?

A. Yes, sir.

Q. Do you recall what price was shown on that price list for Morton's blue package?

A. $1.65.

Q. Did you review or consider the $1.65 price?

A. Yes, sir.

Q. What factors, if any, did you employ in reviewing that $1.65 on Morton's blue package?

A. A possible turnover of that item, selling cost, size and weight.

Q. After having made your review on that basis, what, if anything, did you do with respect to the $1.65 price on Morton's blue package on the Yates & Tabor list?

3449 A. We made a list price at exactly the same $1.65, and the salesmen were authorized to vary their price from $1.60 to $1.70.

Q. Why did you leave the list price at $1.65?

A. I thought that that was a very fair margin on the prospective turnover, and that selling cost was very small.

Q. You say you authorized your salesmen, in addition to carrying list price of $1.65, to take orders from $1.60 to $1.70, is that correct?

A. Yes.

Q. Why did you make that authorization of spread from $1.60 to $1.70, still referring to Morton's blue package?

A. In the city where the drayage was much less, in Macon, we could sell it for $1.60, for the reason we would be very competitive at $1.60 in the city of Macon; and the price of $1.65 was given to straight line accounts who paid their bills promptly outside of the city of Macon, and the price of $1.70 was given to those merchants who were known to ride their accounts and who bought only low margin items.

Q. Did you have the authority, Mr. Timberlake, to change the price on Morton's blue package, which was shown on the Yates & Tabor list, if you had seen fit?

A. Yes.

Q. And you did change it to the extent of making authorization to the salesmen to make the spread from $1.60 to $1.70?

3450 Mr. Haslett: I object to that. There is no testimony that he did change it. The price is still in effect and has been in effect since 1935.

Mr. McBride: Of course, Mr. Examiner, that is not the fact, and this witness has testified, and all questions have been asked of him with respect to the Macon, Georgia, branch. Ten minutes ago it became very evident that the Macon, Georgia, branch did not open until 1939, so counsel's statement cannot be correct.

Trial Examiner Purcell: Gentlemen, we have had enough. I believe the price was changed by authorization of the witness to his salesmen to make the spread from $1.60 to $1.70.

Mr. Haslett: Mr. Examiner, I cannot understand where you find any testimony to that effect.

Trial Examiner Purcell: He has now testified to it.

Mr. Haslett: He testified that they had a meeting and that the manager of Yates & Tabor was there, and that this

$1.60-$1.70 spread was in effect all the time prior to this meeting, and that they just adopted the policy of Yates & Tabor, and that there wasn't any change at all. There has never been any change in the resale price on Morton's round package sale from the time that they purchased the company, or even prior thereto, when it was operat-
3451 ing under the name of Yates & Tabor. It is still the same resale price.

Trial Examiner Purcell: I want to be advised even if we have to go back over the record. I understood Mr. Timberlake's testimony to be that when they took over the Macon branch, he found the price to be $1.65, and he then found that that did not comport with his way of doing business, that particular price, so he authorized his salesmen, for the reasons which he has stated, to offer the goods at $1.60 to $1.70 a case.

Mr. Haslett: Well, Mr. Examiner, you misunderstood that testimony.

Trial Examiner Purcell: If that is so, I want to be set straight.

The Witness: Yes, sir.

Trial Examiner Purcell: What do you mean "yes, sir"?

The Witness: I mean that was so, that I testified their price was $1.65, and that they were at that time, their salesmen had permission to sell at $1.60 to $1.70.

Trial Examiner Purcell: Oh, I see why you did that. I beg your pardon. Read the objection.

(Record read.)

Mr. McBride: Will you read my question?

(Question read.)

Trial Examiner Purcell: He did not change it.
3452 The objection is sustained.

By Mr. McBride:

Q. Mr. Timberlake, I believe you testified that at the time you reviewed the price list of Yates & Tabor with respect to Morton's blue package, or at least that you conferred with the salesmen of Yates & Tabor when you took over, is that correct?

A. Yes.

Q. And that you conferred with them particularly about the offering prices on Morton's blue package salt to the trade?

A. Yes.

Q. Can you state what they reported with respect to

the offering prices with respect to Morton's blue package, as to what it was to the trade?

A. They reported that their prices were very much in line with the spread they were using. Most of the business they were getting for $1.65, but that the spread down to $1.60 enabled them to get other business, and the spread up to $1.70 was strictly in line.

By Mr. McBride:

Q. Did you have authority, Mr. Timberlake, to withdraw the offering price of $1.60, if you had so chosen?

A. Yes.

Q. Did you have authority of withdrawing the $1.70 price if you had so chosen?

3453 A. Yes.

Mr. McBride: Now, Mr. Examiner, at this juncture, I wish to present to the Trial Examiner the clarifying facts regarding the processes followed by this witness with respect to prices on Morton's blue package salt in the Macon, Georgia, branch of the Timberlake Grocery Company. The last several questions have been used for the purposes of making clear what, unfortunately, or otherwise, I had assumed was clear, by the segregation of the Macon, Georgia, branch from the Thomasville branch of the Timberlake Grocery Company, and it is for the purpose of making even more clear what those facts were, that the witness did, in effect, set prices. Counsel for the Commission may choose to call it an adoption of prices if he wishes, but it is obvious from the witness' testimony, when you review, adopt or set, that you necessarily go through the same mental process and employ and consider the same pricing factors. The mere fact of coincidence of prices between Yates & Tabor and that of the Timberlake Grocery Company in Macon, Georgia, falls far short of disqualifying this witness as being competent to testify in regard to Morton's blue package and the pricing factors, and so forth.

I, therefore, move that the Examiner—if that be the proper form—reconsider and reverse his ruling with respect to striking any testimony of this witness pur-

3454 suant to the motion to strike made by counsel for the Commission.

Mr. Haslett: Does the Examiner feel it is necessary for me to reply?

Trial Examiner Purcell: Yes, I do, in the light of the

subsequent testimony of this witness as to his testimony that he considered, in taking over the Macon branch, all of the factors that he would have considered in his main store in the fixing of prices, and that he did so, in fact, take them into consideration, and the mere fact, as Mr. McBride points out, that no change would seem to be necessary, would be quite beside the point.

Mr. Haslett: Mr. Examiner, counsel in his redirect examination of this witness has not added one thing to the clarification of this witness' qualifications. He has testified that the price is in effect from 1935 and is still in effect, and that all he did was to adopt the prices after the round-table discussion with employes which he had carried over from Yates & Tabor. The fact that he testified that he took into consideration the cost of selling and other items, other factors, in setting the resale price of other commodities, which he lowered, and which is in line with his policy, has nothing to do with the issues in this case. The fact that the Examiner has, or the testimony before the Examiner is, that the price was not changed,
and it was nothing but an adoption, and they went
3455 on, as a result of conversations with these men, with
the salesmen, telling him that they were in line, that the $1.70 price in the country, and the $1.65 price in the city, and the $1.60 price when it comes to cash and carry competition. Now, if that is enlightening as to his qualifications to fix the prices, which is the important question here, or fixing prices on Morton's round package salt, then, I am sadly mistaken as to what I consider evidence that has any weight whatsoever.

If there is any doubt in the Examiner's mind before he makes his ruling on Mr. McBride's motion, I would like to take him on recross examination.

Trial Examiner Purcell: Assuming that Mr. McBride has finished with his direct?

Mr. McBride: Yes.

Trial Examiner Purcell: The record may show Mr. McBride has finished with his redirect?

Mr. McBride: Subject, of course, to further redirect on anything new that may come up.

Trial Examiner Purcell: You may have that, sir.

Recross Examination.

Q. (By Mr. Haslett) Mr. Timberlake, at the time you saw the $1.65 on the price list of Yates & Tabor, did you know at that time that you were going to receive a
3456 10 cent rebate from the Morton Salt Company?

A. We expected it, but I did not know it.

Q. But you had expectations of receiving an additional discount?

A. Yes.

Q. Did you take into consideration, at the time you approved the price of $1.65, or the spread of $1.60 to $1.70, the fact that you were going to receive a discount from the Morton Salt Company?

A. No, sir.

Q. What did you take into consideration in arriving at, in approving that figure? Now, what you actually took into consideration?

A. All right, I took into consideration the cost of selling that item.

Q. How did you arrive at the cost of selling that item? You had not even been in business?

A. I had been in business in Thomasville.

Q. But you had not been in business in Macon. Would the cost in Thomasville be the same as it would be in Macon?

A. Practically the same.

Q. Would you have the same labor cost, the same drayage cost? Every item taken into consideration would be identical as in Thomasville?

Mr. McBride: I object unless counsel wants to
3457 make one question at a time, and not present a series of questions.

Trial Examiner Purcell: Objection sustained.

By Mr. Haslett:

Q. Were all of the items identical with the Thomasville branch of the Timberlake Grocery Company?

A. No, sir.

Q. They were not, were they?

A. No, sir.

Q. You said "no, sir"?

A. No, sir.

Q. Did you know how much it was going to cost you to sell that item, Morton's round package salt?

A. We had a pretty good idea that an item that is advertised highly, that the cost of selling, actual selling is usually very low.

Q. How did you know that, sir? Where did you get that idea?

A. From experience, personal experience.

Q. You never made any particular study of it, did you?

A. No, sir.

Q. It is just based upon your experience in the grocery business?

A. Yes.

Q. Did you take into consideration competition?

3458 A. Yes.

Q. And competition was a very important factor, wasn't it?

A. No, sir.

Q. It was not? Why did you take it into consideration?

A. We have taken several factors into consideration.

Q. And all of them were important?

A. All of them had some bearing on it. I would not say all of them were important.

Q. It was really an integrated whole and could not be separated, could it?

A. Yes, I think they could be broken down separately.

Q. Then, how did you arrive at, what figure did you arrive at as your cost?

A. A dollar and a half.

Q. And what figure did you use as your selling cost?

A. That was not broken down.

Q. What figure did you use as to your turnover or volume?

A. That was not broken down.

Q. You don't know, it was just a guess?

A. Yes.

Q. And all of this is based on guesses and estimates?

A. That is correct.

Trial Examiner Purcell: What was the answer?

The Witness: That is correct.

By Mr. Haslett:

3459 Q. I believe you testified, in reviewing this list of Yates & Tabor, they were quite a high priced organization, and that you wanted to lower some of the prices?

A. Yes.

Q. And in fact you did lower the prices?

A. Yes.

Q. Why did you lower the prices?

A. I wanted more volume. We were out for volume business, and we were also going to hold accounts to closer dating than Yates & Tabor, and could afford a lower gross mark-up.

Q. Is it necessary to have lower prices in order to increase volume?

A. In some instances.

Q. The resale price is a very important factor?

A. Yes.

Q. And those prices were taken into consideration in an effort to divert business from competitors to the Timberlake Grocery Company and increase volume, is that correct?

Mr. McBride: If the Examiner pleases, I think it is quite apparent that counsel is going beyond the scope of qualifying this witness on the voir dire.

Trial Examiner Purcell: He is not on the voir dire.

Mr. Haslett: He is not on the voir dire. I am on recross examination.

Mr. McBride: It was my impression counsel was 3460 on the voir dire because my motion is still pending.

Mr. Haslett: I asked for recross, and the Examiner asked you if you had finished your redirect.

Trial Examiner Purcell: That is a correct statement of the record.

Mr. McBride: I will withdraw the motion and ask that the question be read.

Trial Examiner Purcell: Read the question.

(Question read.)

Trial Examiner Purcell: You may answer, Mr. Timberlake.

The Witness: Yes.

By Mr. Haslett:

Q. You testified, Mr. Timberlake, that the selling cost of Morton's round package salt was small?

A. Yes.

Q. What do you base that testimony on?

A. It has a very good demand among all retail stores and consumers.

Q. Is that the only thing taken into consideration in arriving at that answer, that the cost of selling was small?

A. And the advertising that they do in order to build up that demand, yes.

Q. The cost of transportation was not taken into
3461 consideration, was it?

A. Out in the country, yes.

Q. It is a pretty heavy item, isn't it?

A. Yes.

Q. You testified that prices were approved in order to be in line. What did you mean, in line with what?

A. I believe if you check that question back you will find I was asked what did the salesmen say, and that is what I said the salesmen reported, that the prices were very much in line.

Q. In line with competition?

A. Yes.

Mr. Haslett: I think that is all.

Trial Examiner Purcell: You have a motion pending.

Mr. McBride: Yes.

Trial Examiner Purcell: Do you care to be heard on the motion, Mr. Haslett?

Mr. Haslett: No, sir.

Trial Examiner Purcell: Now, gentlemen, because of the peculiar condition of this witness in the fixing of his prices, I am going to grant the motion of the attorney for the respondent to set aside the ruling on the motion to strike, heretofore made, particularly in view of the supplementary testimony had subsequent thereto of
3462 the witness on redirect examination. I think the attorney for the Commission has had the opportunity to bring out all of the various factors surrounding this witness, which would develop his competency or lack of competency as to his ability to fix prices, and I am proceeding too upon the theory that the fixing of prices by, we will say, a one-man store keeper is one thing, and competent and expert testimony upon fixing prices in a cost survey or a price survey, or what not, is quite another.

For the benefit, therefor, of such value as this witness' testimony may have to the respondent, I am going to permit it to stand in toto. Mr. Haslett, I will allow you an exception.

Mr. Haslett: I would like to note that the question of ability to fix prices is not the question involved, the ques-

tion is the fixing of prices, which was never done. However, I have no objection to the Examiner's ruling on this thing.

Trial Examiner Purcell: I am trying to be as fair as I know how.

Mr. Haslett: I agree with that. I think the Examiner is being overly fair to the respondent in this proceeding, and by doing so has prejudiced the Commission's case, and I also feel that the Examiner has missed the point entirely by granting the motion of counsel for the re-
3463 spondent predicated upon the ability to fix prices. The fact, the issue here, is that he did not fix the price and that none of those things were taken into consideration. That was brought out on recross-examination, that he just adopted what the salesmen had said and what Messrs. Yates and Tabor had told him.

Trial Examiner Purcell: Are you gentlemen finished with this witness?

Mr. McBride: I have no further questions.

Mr. Haslett: And I have no questions.

Trial Examiner Purcell: Thank you very much, Mr. Timberlake.

(Witness excused.)

Trial Examiner Purcell: We will take a recess for ten minutes.

(Whereupon, a recess was taken for ten minutes.)

Trial Examiner Purcell: Are you ready to proceed?

Mr. McBride: I will call as the next witness on behalf of the respondent, Mr. Jack Maziar.

JACK MAZIAR, was thereupon called as a witness for the respondent, and having been first duly sworn, testified as follows:

Direct Examination by Mr. McBride.

Q. Mr. Maziar, will you state your name and
3464 address for the record, please?

A. Jack Maziar. I am with the Atlanta Savings Stores, Inc., 659 West Whitehall Street, Atlanta, Georgia.

Q. What kind of company is the Atlanta Savings Stores, Inc.?

A. It is a Cooperative organization.

Q. What sort of merchandise does it handle?
A. A complete line of groceries.
Q. How long have you been with that company, Mr. Maziar?
A. Since 1929.
Q. What position do you hold?
A. General Manager.
Q. You have been General Manager from 1929 to date, is that correct?
A. Yes, sir, we started in 1929.
Q. Will you describe, briefly, what your duties are as General Manager, Mr. Maziar?
A. Buying, setting resale prices, and all other administrative duties.
Q. Do you buy all of the commodities handled by your company?
A. Most of them. I will say about 90 per cent of them.
Q. Do you set all resale prices on other commodities handled by your company?
A. Yes.
3465 Q. Do you carry salt in your line of commodities, Mr. Maziar?
A. Yes.
Q. Will you describe what items of table salt are handled currently by Atlanta Savings Stores?
A. We handle Myles square package, Morton's round package, Sterling round package, and square package, and we now have Carey's round package.
Q. That is a square package, isn't it?
A. No, sir, it is a round package.
Q. Have you handled approximately that same assortment for sometime, Mr. Maziar?
A. We have. The Carey package we just stocked recently, but the other kinds that I called we have handled for a number of years.
Q. Do you know what the invoice price is of Morton's blue package?
A. Yes.
Q. What is it?
A. $1.50 a case of 24.
Q. What is your resale price of Morton's blue package?
A. $1.55.
Q. How long have you had that price in effect of $1.55?
A. A long time, ever since I can remember, ever since Morton's salt was $1.50 a case.

3466 Q. You stated that your company was engaged in a cooperative arrangement, is that correct?

A. That is right.

Q. Will you describe the type of customers that you have in your company?

A. All of our customers are stockholders of the company. The company is owned by the Retail Store Merchants, and we sell to those members.

Q. Do you sell any commodities to retailers or other places, aside from those who are members?

A. No, sir, we do not.

Q. That would be true of Morton's blue package as well as other commodities?

A. Everything we handle.

Q. How many members do you have, Mr. Maziar?

A. 224 or 225.

Q. And they are all retail merchants?

A. All retail merchants.

Q. Are they located in the Atlanta Metropolitan Area, or are they spread over a larger territory?

A. The biggest majority are in the Atlanta Metropolitan Area. We have some in small towns, and some in Columbus, Georgia.

Q. Do you recall how many members you have in the Atlanta Metropolitan Area?

3467 A. I would say about 215.

Q. Approximately 215?

A. Approximately 215.

Q. Does your company, the Atlanta Savings Stores, receive any quantity discounts from Morton's Salt Company on its blue package purchases?

A. No, sir, we do not.

Q. How do you place your order for Morton's blue package, Mr. Maziar?

A. Well, we, in turn, belong to a national association that is composed of cooperative groups, and we mail orders either to our national office, or either we give it to the local salesmen.

Q. What is the name of the national organization?

A. National Retailer Owned Grocers, Inc.

Q. Where is the principal office of that organization?

A. Chicago, Illinois.

Q. From whom do you receive invoices for your purchases of Morton's blue package?

A. From the NROG.

Q. From the Chicago office?

A. From the Chicago office.

Q. And what price is on that invoice to you by the Chicago office of the NROG?

A. $1.50.

3468 Q. Does the Chicago office of the NROG give you any discount or any rebate on any amount of Morton's blue package?

A. We receive patronage dividends from the NROG, not specially on Morton's, but it is on all commodities that we buy from the national office or through the national office.

Q. Do you ever receive any credit memos or any cash of any kind from the Morton Salt Company in the form of a quantity discount?

A. No, sir.

Q. When you receive these participating dividends from the NROG, Chicago office, is there anything on those dividends identifying the rebate or quantity discount or anything, of Morton's blue package?

A. No, sir.

Q. I believe you stated that your resale price was $1.55 per case, is that correct?

A. Correct.

Q. Will you describe the factors you take into consideration in arriving at your $1.55 price?

A. We sell our merchandise at cost plus 3 per cent, so we add 3 per cent to the cost of the item, and we get our selling price.

Q. In this particular case you added 3 per cent to a dollar and a half?

3469 A. To a dollar and a half.

Q. Why did you add 3 per cent to the dollar and a half, Mr. Maziar?

A. Well, being a cooperative organization, we are not trying to make a profit, a large profit, I would say, and we find, from experience, that it does not cost us over four to four and one half per cent to do business, and by adding 3 per cent to the cost of our merchandise, plus our cash discount, covers our expenses.

Q. Do you get any cash discount from the Morton Salt Company?

A. No, sir.

Q. You say that it costs you approximately 4 per cent to do business?

A. 4 to 4½.

Q. What costs do you have reference to?

A. That is over-all costs, including delivery, selling, rent, light, heat, telephone, salaries, all expenses that come into a business.

Q. And that 3 per cent is added to the cost of all commodities as well as Morton's blue package?

A. That is right.

Q. Does your company deliver, Mr. Maziar?

A. Yes.

Q. Does it deliver Morton's blue package?

3470 A. Yes.

Q. On orders received from your retail members, then, Morton's blue package is delivered?

A. Yes.

Q. Is there any charge over the $1.55 made for delivery?

A. No, sir.

Q. So your price is $1.55 made to the retail member stores?

A. Delivered, or they come and get it.

Q. Do you recall, Mr. Maziar, what the present resale prices are on the other table salt items which you described, in addition to Morton's blue package?

A. The square package we sell for 77 cents a case; Carey is $1.08 a case and Sterling, I believe, $1.11 a case.

Q. Have you had occasion, Mr. Maziar, to call at the stores of any of the retail members of your company?

A. Yes.

Q. And have you had occasion to check in those stores the retail prices of Morton's blue package by the members of your organization?

A. Yes.

Q. Can you state what the prices were that you checked?

Mr. Haslett: I object. This man is not in the retail business. He is manager of a wholesale concern. He cannot testify as to the retail prices in the various outlets.

3471 Mr. McBride: If the Examiner please, I am not too terribly concerned about this question, and I am asking this witness, as you will note, not how they sell it, or anything else, but the prices of Morton's blue pack-

age, by way of retail prices, that were observed by him in his visit to the stores. If he can state them, he can, and if he cannot, he cannot. I am not asking for the factors.

Trial Examiner Purcell: Do you object to that?

Mr. Haslett: Yes.

Trial Examiner Purcell: The objection is sustained.

Mr. McBride: Sustained?

Trial Examiner Purcell: Yes.

By Mr. McBride:

Q. Mr. Maziar, you just testified that you have made visits to the stores of the retail members of your organization?

A. Yes.

Q. And I believe you testified that you have observed the retail prices of Morton's blue package?

A. Yes.

Q. Where did you observe those prices, Mr. Maziar?

A. On the shelves of the retail stores.

Q. Was there a price tag shown?

A. In some stores, yes.

Q. With respect to those stores, where the retail
3472 prices were shown on the shelf, can you state what prices were shown on that shelf?

A. Yes, from 8½ to 10 cents a package; different stores, different prices.

Q. It would range between there?

A. Between 8½ to 10 cents a package.

Mr. McBride: You may cross-examine.

Cross-Examination by Mr. Haslett.

Q. Mr. Maziar, what do you do with the rebate that you get from the main office in Chicago?

A. We enter that on our records as miscellaneous income.

Q. I mean after you enter it, what do you do with it?

A. At the end of each fiscal period, if we make a profit from our operations, we distribute that profit to our members in accordance with their purchases from the Atlanta Saving Stores, and that money that we receive from the national office is also distributed to our members, and is included in our total lump sum of profits for that year.

Q. So that if your company receives a rebate from the

Morton Salt Company you put it in a special account and at the end of the year it is returned to the retailers?

A. No, sir, not only that, that is added to our income.

Q. But that would be a part of it?

A. That would be a part of it if there is income.

3473 At times we pay dues to our national office, and after we pay dues, we do not get, we do not have anything left.

Q. Have you attended any meetings of the NROG in Chicago?

A. Yes.

Q. Do you know Mr. de'Miller?

A. Yes.

Q. Do you know whether or not the NROG receives any rebate or allowance from the Morton Salt Company?

A. I don't know.

Q. You never heard that discussed?

A. No, sir, I have not heard discussed Morton's salt, but not only Morton's salt, but all salt people, I will say, rather, that is all salt we buy, whether it is Morton, Myles, or who we buy from, the invoices do not come to the Atlanta Savings Stores. The national office bills us for the salt.

Q. I believe you said you place your orders on occasion, you place them with a local representative of the Morton Salt Company?

A. That is right.

Q. And he, in turn, transmits them to the Chicago office, do you know?

A. I don't know, no.

Q. You know you place them with the local representative of the Morton Salt Company?

A. Yes.

3474 Q. What would be your retail price if the cost of Morton's salt was $1.40 instead of $1.50?

A. If we were to pay $1.40, we would add 3 per cent to the $1.40.

Q. So that the cost of the commodity has quite a bit to do with the resale price?

A. That is right.

Q. It is the most important factor?

A. The cost, yes. We base our selling price on the cost.

Q. Of course, you do not take into consideration the

prices of competitors because you only sell to your own members, is that correct?

A. In certain cases we do not.

Q. What would be some of the other cases?

A. One of them is sugar. Now, we do not make 3 per cent on sugar.

Q. Why is that?

A. Sugar is so highly competitive that if we were to add 3 per cent to our cost of sugar, and keep the cash discount, our members would be able to buy sugar from other wholesalers considerably cheaper than from us.

Q. Do your members purchase commodities from other wholesalers?

A. Yes. We cannot make them buy from us.

Q. I see. It is not an exclusive contract?

3475 A. No exclusive contract, not at all.

Q. So your members would have the opportunity to purchase Morton's round package salt, if they could get it at a lower price, from one of your competitors?

A. That is right.

Q. You do not get any cash discount from the Morton Salt Company, do you, sir?

A. No, sir.

Q. So that is not included in arriving at the resale price of $1.55?

A. We figure our cost of merchandise. we do not figure the cash discount. The cash discount is just additional income, as far as we are concerned. We do not deduct cash discount from the cost of any item.

Q. Then, it is 4½ per cent added to the cost?

A. No.

Q. What is it?

A. 3 per cent.

Q. What is the other—

A. If an item costs $2, less 2 per cent, we do not deduct the 2 per cent. If we pay the invoice in ten days, or whatever the time would be, we make that 2 per cent.

Q. You stated it was 4½ per cent. How do you arrive at that figure?

A. The cost of doing business is 4 to 4½ per cent.

3476 Q. Can you explain to me how the differential between 3 per cent, which you add to the cost of the commodity, in arriving at your resale price, and the 4½ per cent. being the actual cost of operation, how that is taken into consideration? How you arrive at that?

A. The cash discount that we get, that we make each

month, that helps to defray our expenses. Then, we also have, where each member pays us $25 a year dues. That is included in the income. But, our actual cost of doing business, we figure our expense, and the volume of sales for the year, and we get our cost that way.

Q. So the actual cost of doing business is 4½ per cent?

A. Between 4 and 4½ per cent.

Q. And the actual mark-up is 3 per cent?

A. That is right.

Q. So it is 1½ per cent less, 1½ per cent below cost, is that correct?

A. It all depends on the way you figure. If we figure the cash discount to our income, and our dues, it more than pays our cost of doing business.

Mr. Haslett: I believe that is all.

Redirect Examination by Mr. McBride.

Q. I believe you stated, Mr. Maziar, that you took your volume into consideration in arriving at your 4½ per
3477 cent cost, 4 to 4½ per cent cost?

A. Yes.

Q. In what way did you take your volume into consideration?

A. Our total gross volume?

Q. Why is your volume important to be considered in arriving at your cost of doing business?

Mr. Haslett: I object to this line of questioning. It is beyond the scope of cross-examination.

Trial Examiner Purcell: Yes, what is the object of it, Mr. McBride?

Mr. McBride: If I am measured by the scope of cross-examination on his cost of doing business, I am trying to get an explanation on the record. In answer to Mr. Haslett's question, the witness testified as to the effect of the volume.

Trial Examiner Purcell: That the witness has gone into that, is that part of your objection?

Mr. Haslett: It is beyond the scope of cross-examination. I did not ask him anything about volume.

Mr. McBride: The witness testified this 4½ per cent cost of doing business was arrived at in consideration of his volume of business. In other words, it was in answer to one of Mr. Haslett's questions. That is what I want to qualify.

Trial Examiner Purcell: That is right, he said
3478 he had a 3 per cent mark-up, and the cash discount figured in, and the $25 per year, the yearly dues of the various members was taken into consideration. and then, in addition to that, the entire volume was taken into consideration, and they got their turnover.

Mr. Haslett: I believe the Examiner is mistaken. If you will read his cross-examination, you will find he never mentioned anything about volume. However, it is not important.

Trial Examiner Purcell: Let's go back, then.

(Record read.)

Mr. Haslett: That has nothing to do with the question counsel is now asking.

Trial Examiner Purcell: Read counsel's question, please.

(Question read.)

Trial Examiner Purcell: The objection is overruled.

By Mr. McBride:

Q. Do you have the question now, Mr. Maziar?

A. If you don't mind, will you read it, please?

Trial Examiner Purcell: Read the last question, Mr. Reporter, please?

(Question read.)

The Witness: Well, we must consider all of our
3479 volume, because we have certain fixed expenses. Regardless of the volume we do, the expenses are the same, and with our help that we have at present, and our salaries, we can always add an additional volume of business with the same expense, and we must get our total volume of sales, and our total expenses, and then see what the percentage of expenses is to our sales.

Mr. McBride: I have no further questions.

Recross Examination by Mr. Haslett.

Q. Mr. Maziar, does the Atlanta Savings Stores purchase 5,000 cases of Morton's round package salt during any 12 consecutive months?

A. I don't think so.

Mr. Haslett: That is all.

Trial Examiner Purcell: Is that all?

Mr. McBride: No further questions.

Trial Examiner Purcell: Thank you, Mr. Maziar.

(Witness excused.)

3481 Richland County Courthouse,
Columbia, South Carolina,
Friday, November 13, 1942.

Met, pursuant to adjournment, at 10 a. m.

Before:

James A. Purcell, Trial Examiner.

Appearances:

John T. Haslett, Esq., Attorney for the Federal Trade Commission.

L. M. McBride, Esq., 310 South Michigan Avenue, Chicago, Illinois, attorney for respondent.

3482 Mr. McBride: Mr. Examiner, I call as my first witness on behalf of the respondent Mr. J. E. Timberlake, Sr.

3483 J. E. TIMBERLAKE, SR., was thereupon called as a witness for the Respondent, and having been first duly sworn testified as follows:

Direct Examination by Mr. McBride.

Q. Will you state your name, and address for the record?

A. J. E. Timberlake, Senior, Columbia, South Carolina.

Q. What is your occupation, Mr. Timberlake?

A. I am Secretary & Treasurer of Thomas & Howard Company.

Q. What business is that company engaged in?

A. Wholesale Groceries.

Q. That is located here in Columbia?

A. Yes.

Q. And you are the same Mr. Timberlake who testified in Columbia a few months ago on behalf of the Trade Commission?

A. Yes.

Q. How long have you been connected with the Thomas & Howard Company?

A. Thirty years.

Q. In what business has the Thomas & Howard Company been engaged?

A. Wholesale groceries.

Q. And that has been the business of that company during the entire period of your connection with it?

A. Yes Sir.

Q. What are your present duties with Thomas & 3484 Howard, Mr. Timberlake, will you describe them briefly?

A. Well, I am general manager.

Q. What does that involve, what are your duties?

A. I have a wide responsibility to do with the management.

Q. As general manager, do you have to do any of the buying for the company?

A. Yes.

Q. Have you been engaged in buying for the company for any particular period of time?

A. For thirty years?

Q. You have done that for thirty years, is that correct?

A. Yes.

Q. Does your duty as general manager involve the setting of any sale prices?

A. Yes.

Q. And have you been doing that for the thirty-year period? Or only part of it?

A. Yes Sir.

Q. By "Yes Sir," do you mean you have been doing it for those thirty years?

A. Yes Sir.

Q. Your company, as a wholesale grocery concern, handles all kinds of groceries and allied commodities, is that correct?

A. Yes Sir.

Q. Does your company handle any salt?

A. Yes.

Q. Will you describe the table salt items that are 3485 handled by your company, as to size and type?

A. We handle the package salt known as the nickle and ten cent packages. I don't believe bulk salt is considered table salt.

Q. The nickle and ten cent packages, do you recall the size of those packages?

A. I don't recall the weight.

Q. Do you know whether or not you handle any items of 36-one and a half pound square table salt?

A. Yes.

Q. Do you handle Morton's round package, free-running, iodized salt?

A. Yes.

Q. Do you do the buying of the salt items, Mr. Timberlake?

A. Yes. I don't specially do the salt buying, I do the buying, not the actual cars, I have that done by someone in the shipping department that is familiar with the needs.

Q. You determine, however, what items are to be handled in the salt line, is that correct?

A. Yes.

Q. And undertake the specific duty of seeing that the order is placed with one of your assistants, is that right?

A. Yes.

Q. Your purchasing duties, as you have described them, would include the matter of purchasing Morton's package salt?

A. Yes.

Q. You testified, Mr. Timberlake, that you set the 3486 resale prices on the commodities handled by your company, does that include the setting of the resale prices on the table salt items that you have described?

A. Yes.

Q. And particularly Morton's blue package salt?

A. Yes.

Q. You have been performing those duties, you say, for some thirty years?

A. Yes.

Q. What is your current resale price of Morton's blue package salt as listed by your company?

A. $1.70, with $1.65 quantity.

Q. What is the purchase price of Morton's blue package salt?

A. $1.50.

Q. Has that purchase price been in effect for some time?

A. Yes.

Q. How long has your resale price of $1.65 to $1.70 been in effect?

A. I am not sure, I think about five years, when the package was changed last.

Q. Was that price that you have now placed on this at the time it changed?

A. Yes.

Q. Are you responsible for making the change of price at the time?

A. Yes Sir.

Q. At the time of the prior hearing in Columbia, Mr. Timberlake at which you were a witness, a witness
3487 from the Silver's Stores, I believe the name of the firm in Columbia is, testified that his company was purchasing Morton's blue package salt at $1.50 per case from your company. At the time you testified before, did you know that your company was making sale of blue package salt at $1.50 a case?

A. No.

Q. Had you authorized the sale of blue package salt to them at $1.50 per case?

Mr. Haslett: I object to the question of whether this witness authorized the sale of Morton's blue package at $1.50. The facts remains that it was sold at $1.50.

Trial Examiner: I think you are correct, Mr. McBride, the witness has already testified that he did not know that any salt was being sold by his company at that price, and if he did not know about it, why, of course he did not authorize it. He could not have authorized it. Objection sustained.

Mr. McBride: Do you know whether the Thomas & Howard Company is now selling Morton's blue package at $1.50 to Silver's Store?

A. They are not.

Q. Does your company receive any discount from the Morton Salt Company?

A. Yes.

Q. What is the amount of that discount?

A. Ten cents per case on the round package.

Q. How often do you receive it, if you recall?

3488 A. I am not sure, I think the quarter.

Q. In pricing Morton's blue package for resale, do you use $1.50 per case as the cost basis or $1.50 less ten cents as cost basis?

Mr. Haslett: I object to that, Mr. Examiner. There is no foundation laid for the question.

Trial Examiner: Objection overruled.

A. In making the resale price, we use the $1.50 cost.

Q. In what way, then, Mr. Timberlake, is the ten cents quantity discount handled by your company?

A. When it is received, it is credited to merchandise purchased.

Q. Is it credited specifically to the blue package salt or simply to general merchandise?

A. To general merchandise purchases.

Q. Approximately how many commodities of various sizes and types of all kinds does your company handle, Mr. Timberlake, excluding now any consideration of wartime stringencies?

A. Approximately two thousand.

Q. And of those two thousand commodities, some three or four would be table salt items that you have described? Is that correct?

A. Yes.

Q. Can you estimate, Mr. Timberlake, what percentage of your total gross sales are accounted for by the gross sale of your table salt items during the course of an annual period?

3489 A. I would guess about a half of one percent.

Q. In fixing the resale prices on the various commodities handled by your company, will you describe what factors are considered by you in arriving at the resale price?

A. I would say the turn-over. An item that turns rapidly is usually handled at a less profit than one that turns slow.

Q. Are there any other factors besides the turn-over that are considered?

A. Volume.

Q. Do you consider the cost of the article that you are pricing?

A. Yes.

Q. Do you consider the competitive prices on the item that you are pricing?

A. Yes Sir.

Q. So that it is a combination of those factors, is that correct?

A. Yes.

Q. You mentioned that items having a high turn-over,

if I quote you correctly, are sold at a smaller margin than other items, is that correct?

A. Yes.

Q. Do you regard Morton's blue package as having high, medium or low turn-over in the terms of your general commodities?

A. Medium.

Q. Are there other commodities which have a
3490 higher mark-up than salt items?

A. I think so.

Q. And there are some others that have a lower than salt items?

A. Yes.

Q. In pricing the salt, Mr. Timberlake, do you concern yourself only with the salt items being priced or do you concern yourself with the relationship of the sale of salt to all of your commodities in terms of mark-ups?

A. I think we would concern ourselves in relationship to all items.

Q. Have you ever been in the wholesale salt business alone, Mr. Timberlake?

A. No.

Q. Have you ever heard of any wholesaler who has been?

A. No Sir.

Q. In the operation of your company, Mr. Timberlake, do you operate on the cash-and-carry basis or do you operate a service wholesale business?

A. What do you mean by "service wholesale"? We solicit business and make deliveries.

Q. Does your company extend credit as one of the services?

A. Yes.

Q. Does the cost of delivery and the cost of selling enter in any way into the determination of resale prices placed on the commodities?

A. Yes.

Q. Mr. Timberlake, do you recall what the current
3491 sale price is on the 36-one and a half squares that are handled by your company, referring now to one and a half pound square salt packages?

A. Ninety-five cents.

Q. If you were selling Morton's blue package salt at $1.65 per case, Mr. Timberlake, and at the same time competitors of yours were selling Morton's blue package salt

at $1.65 a case, what effect, if any, would there be on your business if you were paying at that time $1.50 a case, while that competitor was paying $1.40 a case?

A. There would be a difference of ten cents in the cost.

Trial Examiner: The question, Mr. Timberlake, was what effect it would have on your business?

A. I don't know that I understand it well enough to answer that particular question.

Trial Examiner: Will you read the question to him again?

The reporter reads the question to the witness again.

A. None on the selling end.

Q. Still referring to that example, Mr. Timberlake, would the fact that your competitor in that illustration was paying ten cents less per case than you were paying have any effect on the volume of your business on the blue package?

A. So long as the selling price was the same, no.

Q. Do you know, Mr. Timberlake, what your competitors are paying for the various commodities that are
3492 handled by them in competition with your firm?

A. No.

Q. So far as you know, they may be paying more for some and less than you for some?

A. Yes.

Q. Do you know what the selling prices of your competitors are with respect to all commodities handled in competition with your company?

A. No Sir.

Q. They could be higher on part of the commodities or could be less than you on other commodities?

A. Yes.

Q. Would that be true with respect to salt items as well as other commodities?

A. Yes Sir.

Cross-Examination by Mr. Haslett.

Q. Mr. Timberlake, you testified that you now sell Morton's round package salt at $1.65 a case and $1.70 a case, is that correct?

A. Yes, $1.65 and $1.70, $1.70 is the list.

Q. Why did you sell it at $1.65 a case?

A. Well, quantity and competition.
Q. Competition has something to do with that price?
A. Yes.
Q. And the $1.70 price is the price you have set on the salt to be sold to all customers other than those at which you sell it at $1.65, is that correct?
3493 A. Yes.
Q. Now, when you stated that your cost of the commodity was $1.50 per case, did you mean your actual cost was $1.50?
A. No. That is our considered cost on that item.
Q. What would be your actual cost?
A. Well, $1.40.
Q. $1.40 per case?
A. Yes.
Q. Your company receives a ten cent discount from the Morton Salt Company, I believe you testified?
A. Yes.
Q. Does the Thomas & Howard Company of Columbia, South Carolina, purchase five thousand cases of Morton's round package salt during any twelve consecutive month period?
A. No.
Q. When did you stop selling Morton's round package salt to Silver's Store at $1.50 per case?
A. I don't recall when, it was since the hearing.
Q. Why did you stop?
A. I learned about it and stopped it.
Q. How did you learn about it?
A. I heard the testimony.
Q. You heard the testimony?
A. Yes, I heard the testimony.
Q. Do you know how long that price had been in effect prior to the time you stopped it?
A. No.
3494 Mr. McBride: Mr. Examiner, I asked one question of the witness, and the witness testified he did not know it was in effect at the time of the hearing, so he could not possibly know how long it was in effect prior to that time.
Trial Examiner: That does not necessarily follow, Mr. McBride. He might have consulted the books and found that to be a fact, or found out for his own satisfaction that

the $1.50 price had been in effect for some years. Objection overruled. You may answer, Mr. Timberlake.

Q. Mr. Timberlake, I believe you stated that you learned that Silver's Store was getting the $1.50 price from your company on Morton's round package salt, will you tell just how that information came to you?

Mr. McBride: Mr. Examiner, I object to that as being irrelevant and immaterial to the issue in this case.

Trial Examiner: Objection overruled.

Mr. McBride: May I finish my statement?

Trial Examiner: You may go ahead.

Mr. McBride: I don't see that it is material as to how he found out or why he found out, he has already testified that he discovered it at the testimony taken at the hearing, and I can't see why any particulars would add to this case as to how or when he did.

Trial Examiner: Objection overruled. You may answer.

A. I thought I had answered that.

Q. No, you have not. Would you like to have the 3495 question reread?

Reporter rereads the question to the witness.

A. I do not know just how it reached me.

Q. You don't know what source?

A. No.

Q. Mr. Timberlake, did you immediately upon receiving the information that Silver's Store was getting the $1.50 price on the Morton's round package salt, discontinue your service to that store, on Morton's free-running and iodized salt?

A. I don't recall, I imagine they still buy it from us.

Q. Do you know what price it is now, if they do?

A. We made them a price of $1.60.

Q. Why did you make them a price of $1.60?

A. They buy a large quantity of merchandise from us, of other items as well as salt.

Q. And you gave them the price of $1.60 for that reason?

A. Yes.

Q. You, in answer to one of Mr. McBride's questions, stated that cost of the product, competition and volume were the factors that were considered by you in arriving at your resale price. Do you remember testifying to that?

A. Yes.

Q. Did you mean the cost of the commodity from the processor as the price which your company pays for it?

A. Yes.

Q. Would you say that the cost was the most important factor?

3496 A. It is one of the important factors.

Q. And competition is another important factor?

A. Yes.

Q. And volume is also an important factor?

A. Yes.

Q. Mr. McBride gave you an hypothetical question when he stated that if you were selling Morton's round package salt at $1.65 per case and one of your competitors was selling it at $1.65 per case, but that the competitor was paying $1.40 per case while you were paying $1.50, that that would not affect, and I believe you stated that it would not affect your selling price, it would not injure you as to the volume of business that you did, and you answered that it would have no effect on the selling end, do you recall that?

A. Yes.

Q. What did you mean by none on the selling end?

A. That if each one sold at the same price, it would have no effect on the selling end.

Q. Let's go to the other end, would it have any effect on the cost end?

A. Yes, sir.

Q. It would mean that your competitor was making ten cents per case more than you were?

A. Yes.

Q. And if that were true on all commodities that he purchased, that he was making ten or fifteen percent, say, more profit, that would still have a substantial effect

3497 on your business, would it not?

A. Yes.

Q. Do you now have any customers that you are selling Morton's round package, free-running and iodized salt to at $1.50 per case?

A. No, not to my knowledge.

Q. Do you have any customers that you are now selling Morton's round package free-running and iodized salt to at $1.55 a case?

A. No, not to my knowledge.

Q. Have you recently checked the books of your com-

pany in regard to your selling price to your various customers on Morton's round package salt?

A. No, sir.

Q. So the lowest price that you know of, as far as you know is $1.60 a case on Morton's round package salt?

A. Yes, that is right.

Q. And you are also selling it at $1.65 and $1.70?

A. Yes.

Q. I think that is all, Mr. Timberlake.

Redirect Examination by Mr. McBride.

Q. Mr. Timberlake, if you were not to receive the ten cent quantity discount on Morton's blue package salt, would you change your resale price of $1.65 and $1.70, all other factors to remain the same?

A. No, sir.

3498 Q. Referring once more to our hypothetical question, Mr. Timberlake. Would it necessarily follow that the competitors, referring again to the illustration, who purchased at $1.40 and sold at $1.65, would make more net profit on the sale than you did buying at $1.50 and selling at $1.65?

A. It would depend on the turnover and the method of distribution.

Q. If the costs of doing business were greater than yours, to a degree sufficient to offset the ten cents differential in your purchase price, that would equalize the possibility of net profit on the sale, is that correct?

Mr. Haslett: I object to that on the ground it is leading.

Trial Examiner: I am inclined to agree with Counsel, Mr. McBride. Objection sustained.

Q. Referring again to the same example, Mr. Timberlake, if your competitor, buying at $1.40 and selling at $1.65, sold one case during the month of February, 1942, and you, buying at $1.50 and selling at $1.65, sold forty cases during the month of February, 1942, would you or your competitor have the greatest profit out of the sale of Morton's blue package salt?

A. The one that sold the largest number of cases would have the greatest profit.

Q. That would be yourself in that illustration, is that correct?

A. Yes.

Q. That is all.

3499 *Recross Examination by Mr. Haslett.*

Q. Is it also true, Mr. Timberlake, that your competitor who was purchasing at $1.40, and who has the same operating costs as you have, sells forty cases and you sell forty cases of salt, while purchasing at $1.50, that he is still making ten cents more on a case?

A. Yes, sir.

Redirect Examination by Mr. McBride.

Q. Do you know, Mr. Timberlake, what the operating costs and turnover of all of your competitors, or any of them is?

A. No, sir.

Q. The operating costs would be greater or less than yours, as far as you know?

A. Yes.

Q. And their volume could be greater or less than yours, as far as you know?

A. Yes.

Q. That is all.

Mr. Haslett: That is all.

(Witness excused.)

Mr. McBride: Mr. Examiner, I call as my next witness on behalf of the Respondent Mr. W. D. Flinton.

W. D. FLINTON was thereupon called as a witness for the respondent and, having been first duly sworn, testified as follows:

3500 *Direct Examination by Mr. McBride.*

Q. Will you state your name and address for the record, please?

A. W. D. Flinton, Charlotte, North Carolina.

Q. What is your occupation?

A. Wholesale grocery business.

Q. What company are you connected with?

A. Thomas & Howard Company of Charlotte.

Q. With headquarters in Charlotte, North Carolina, is that correct?

A. Yes.

Q. How long have you been connected with that business?

A. Since about 1922.

Q. Are you the same Mr. Flinton who testified on behalf of the Commission on this case three or four months ago in Charlotte, North Carolina?

A. Yes.

Q. What is the business of the Thomas & Howard Company at Charlotte, N. C.?

A. Wholesale groceries.

Q. They carry groceries and all allied products?

A. Yes.

Q. Does the Thomas & Howard Company, with which you are connected, carry any salt items?

A. Yes.

Q. Confining yourself only to table salt items, will you describe the various items of table salt handled by
3501 your company at the present time?

A. We handle Morton's pound package and square package salt and pocket five and ten round packages.

Q. You referred to square packages, Mr. Flinton, is that the 36-one and a half pound squares per case to which you have reference?

A. Yes.

Q. What are your duties with Thomas & Howard Company at Charlotte?

A. General Manager. I am in charge of it.

Q. How long have you held that position?

A. Since 1922.

Q. Do your duties in any way entail the purchase of commodities handled by your company?

A. Yes.

Q. What proportion of those commodities handled by your company do you purchase, Mr. Flinton?

A. I purchase and supervise the purchase of all, I hardly know the percentage of what I actually purchase. I actually purchase a lot of the major items and supervise the purchase of the others.

Q. Do you have an assistant who actually purchases some of the items?

A. Yes.

Q. But the purchasing policy is your jurisdiction and your responsibility, is that correct?

A. Yes.

Q. Do you purchase the salt items which you have
3502 just described?

A. I direct from whom the purchases are made and supervise the purchasing, but the actual sorting of orders is made by my assistant.

Q. If there were to be a change made in the company or companies from whom you purchase salt, to whom—who would determine that change?

A. I would.

Q. And that has been true since the time that you have been general manager?

A. Yes.

Q. How many commodities, if you can estimate that, does your company handle, referring to all commodities?

A. I would estimate it to be three thousand.

Q. That is not making allowances for current shortages due to the war, is that correct?

A. No, it is not.

Q. Who fixes the resale price on the commodities handled by your company?

A. I fix some of them and my assistant fixes some.

Q. Is the procedure with respect to the jurisdiction over fixing the resale price the same as you testified to with respect to the purchasing procedure?

A. Yes.

Q. And you supervise or actually fix the resale prices during the entire period that you have been general manager of your company?

A. Yes.

3503 Q. That would include all items, all salt items that you have described?

A. Yes.

Q. You testified that you handle Morton's blue package salt, what is the current resale price on Morton's blue package?

A. $1.60.

Q. How long has that been in effect, if you call?

A. For a number of years.

Q. By number of years, do you mean three or four or ten years or approximately how long?

A. Well, three or four or more. The Morton's blue package was a larger package a few years ago, and sold at a higher price per case, as I recall this price at Charlotte has been in effect since about the time of the change of size of the package.

Q. What is the current resale price, if you recall on the 36-one and a half pound squares that you made reference to a moment ago?

A. Ninety-five cents.

Q. What is the current invoice price, if you know, on Morton's blue package?

A. The invoice of Morton's to us is $1.50.

Q. Has that been in effect for some time?

A. Yes.

Q. Does your company receive any discount on Morton's blue package salt?

A. We receive ten cents per case.

3504 Q. And from what source is that received?

A. From Thomas & Howard Company in Columbia.

Q. How often do you receive that, if you recall?

A. I am not sure, I think it is quarterly.

Q. What factors, Mr. Flinton, are employed by you in fixing the resale prices on the various commodities handled by your company? Referring now to all items, not just the salt items?

A. Costs and turnover and competition.

Q. Would the costs of doing business be a factor to be considered?

A. Yes.

Q. In pricing any given commodity for resale, Mr. Flinton, do you consider that particular commodity alone or do you consider it in relationship to all other commodities so far as the mark-up is concerned?

A. In relationship to the other commodities.

Q. In pricing Morton's blue package salt, did you consider the factors which you have just described?

A. Yes.

Q. Referring now to the cost factor, what costs did you use in pricing for resale Morton's blue package, $1.50 or $1.50 less ten cents per case?

A. $1.50, the invoice cost.

Q. And has that been true for some time, Mr. Flinton?

A. Yes.

Q. Has there been any variation from that at any time since you have been receiving the quantity discount?

3505 A. No.

Q. In what manner do you handle the quantity discount to which you made reference?

A. Just credit it on our cash journal and it goes back to the profits.

Q. If the quantity discount referred to were discontinued, we will say, tomorrow, Mr. Flinton, and all other marketing factors remained the same, what, if any change, would you make in the $1.60 resale price on the Morton's blue package?

A. We would not make any change. The $1.60 price has been generally established in our territory as a resale price for a long time. There has been little, if any, variation from it.

Q. Can you estimate, Mr. Flinton, the percentage of your gross sales on all commodities in a given annual period that would be accounted for by the gross sales for table salt items which you have just described?

A. Do you mean about what percentage of our total gross sales is table salt?

Q. Yes.

A. It would be a fraction of one percent.

Q. Has your company at any time, if you know, Mr. Flinton, ever had the lowest resale prices on all of the commodities in reference to all of the competitors?

A. No, we have not.

Q. Has your company ever had the highest prices compared to all competitors on all commodities in the
3506 Charlotte area at any given time?

A. No.

Q. Your company is higher on some and lower on others, is that correct?

A. Yes.

Q. Do you know what the purchase price is that is paid by your competitors for all of their salt items?

A. No.

Q. Do you know what they pay for all of their other commodities besides the salt items?

A. No.

Q. They could be paying more or paying less than your company, so far as you know?

A. Yes.

Q. Do you know what the resale prices for all of your competitors on all of their salt items are?

A. No.

Q. Your answer would be the same as to all commodities handled by your company and the competitors?

A. Yes.

Q. They could be higher or they could be lower than your company as far as you know?

A. Yes.

Q. Mr. Flinton, when your company was selling Morton's blue package salt at $1.65 per case, and the competitors of yours were also selling Morton's blue package salt at $1.65 per case, both companies paid $1.50 per case, both companies had the same operating expenses, but you
3507 sold forty cases in a given month, and during that same period your competitor sold only ten cases, in your opinion, which company would make the most net profit?

A. If we were operating at a profit, we would make the most profit.

Q. Why do you give that answer?

A. Because of the volume, what we would be doing would be a greater volume of business.

Q. Now, Mr. Flinton, if both companies, again using an illustration, you and your competitor were selling at $1.65 per case the Morton's blue package salt, and you were paying $1.50 per case, while your competitor was paying $1.40 per case, would that in any way affect your business so long as the resale prices remained the same?

A. It would not affect our volume of sales.

Q. Would it affect your business in any other way?

A. It would affect our net profits.

Q. Would it necessarily follow, Mr. Flinton, that if your competitor made ten cents per case more than you did, that your net profits would be thereby reduced?

A. No.

Q. When you say that your competitor would make in that illustration ten cents per case more profit, do you mean net profit or gross profit?

A. Gross profit.

Q. Using that same illustration with the resale prices, the same, and the competitor purchasing at $1.40 while you purchased at $1.50, would it be possible for you to make more net profit than your competitor if your
3508 expenses were less than your—and your turnover greater than that of your competitor?

A. Yes, it would be possible, if we sold a large enough volume of salt.

Q. Then, in that illustration, the determination of the comparative net profits between your competitor and your-

self would be predicated on costs, turnover and expenses, the factors which you described before as the price factors, is that correct?

A. Yes, and the volume.

Q. Mr. Flinton, do all commodities handled by your company carry the same gross mark-up?

A. No.

Q. In comparison with other commodities, your mark-up of $1.60 on Morton's blue package salt is higher or lower or average?

A. I would say it is averaged based on the volume and turnover.

Q. Is the volume and turnover on Morton's blue package about average or small compared to other commodities?

A. It is better than the average, not as great as some others.

Q. Approximately how many times a year would you get a turnover on Morton's blue package, if you recall?

A. I would estimate ten or twelve times.

Q. That would be better than average turnover on other average products?

A. Yes, better than average compared to other products.

3509 Q. If your turnover were only two or three times per year on Morton's blue package, would that in any way affect the resale price of $1.60?

A. Yes.

Q. In what way would it affect it?

A. We would try to get a higher margin of profit.

Q. By reason of the decreased turnover, is that correct?

A. Yes.

Cross-Examination by Mr. Haslett.

Q. Mr. Flinton, what do you mean by the word "turnover"?

A. I mean as to how often that item is brought and sold.

Q. What is the difference between turnover and volume?

A. Turnover refers to frequency of sale and volume refers to quantity of sales.

Q. You might have twenty turnovers a day but very small volume?

A. Yes, that is correct.

Q. You stated that the turnover would have a substantial effect upon the resale price?

A. Yes.

Q. Why is that so?

A. Because you would receive a profit on that same item more times per year if you had a good turnover than you would if you had a small turnover.

Q. What would happen if you had a number of turnovers and a very small volume?

A. Where you have a large turnover, you don't
3510 from a practical standpoint have a very small volume.

Q. But is it not possible to have a large turnover and yet still have a very volume, you might have twenty orders of one case each?

A. Yes, I would say it is possible but not practical. It does not work out that way.

Q. Would the volume have anything to do with the resale price?

A. Yes, sir.

Q. And the turnover would have something to do with the resale price?

A. Yes.

Q. And competition would be a factor?

A. Yes.

Q. And the cost of the commodity would be a factor?

A. Yes.

Q. Would you say the cost of the commodity would be the most important factor?

A. Yes. Now turnover and volume possibly affect it in consideration.

Q. Mr. Flinton, you stated that you sell at $1.60 to all of your customers from the Charlotte corporation of Thomas & Howard Company?

A. I think so, I know that price is generally established and requires little attention because it is commonly sold at that price almost without exception. If there are any exceptions, I don't know of it.

Q. You say if there are any exceptions, to that
3511 price, you would know of it?

A. I say if there are any exceptions, I don't know it. I don't think there are exceptions because it is generally established throughout our territory and not so much attention is paid to the resale of salt because $1.60 is the price well established.

Q. Did you set the price of $1.60?

A. From our sales from Thomas & Howard, I had a part in setting the price.

Q. What factors did you take into consideration in arriving at the $1.60 price?

A. The cost and turnover and volume and competition.

Q. And I believe you stated that you had used the invoice cost of $1.50?

A. Yes.

Q. In arriving at the $1.60 price?

A. Yes.

Q. What is the actual price of that commodity to your company?

A. The actual price, it cost us $1.50, we pay the ten cents which we receive later.

Q. How does your company place the orders for the required amount of Morton's round package?

A. They are placed at times in cars assorted with other items, and at other times in full car shipments to the brokers.

Q. If your company does place the order for the required amount of Morton's blue package, does it place
3512 the order through Morton's own salesmen or through the brokers?

A. Through Morton's own salesmen at times and at other times through their brokers who represent them.

Q. And your company is billed directly from the Morton Salt Company?

A. Yes.

Q. Now, does the Thomas & Howard Company at Charlotte purchase five thousand cases of Morton's round package salt during any consecutive twelve-month period?

A. No, I don't think so.

Q. Mr. Flinton, Mr. McBride, I believe, asked you a question in which you stated that in figuring your margin of profit on salt, that it is done in relationship to other commodities?

A. Yes.

Q. Did you mean other salt commodities?

A. I meant to all of the commodities that we handle. Meaning that if we handled salt alone, we could not possibly work on a margin of profit at which salt is sold, and in my opinion no jobber could.

Q. Then you have to take into consideration all of the

two or three thousand items in arriving at any particular margin of profit on any one item?

A. Yes.

Q. Mr. McBride gave you a statement of facts which he asked you to assume in order to elicit various answers. I will ask if you assume the same statement of facts whereby your company is purchasing at $1.50 a case and selling at $1.65 a case, and one of your competitors
3513 was selling at $1.65 a case and purchasing at $1.40 a case, and both of you had the identical operating costs and volume, would the competitor be making ten cents more per case on the round package salt than you could?

A. He would be making ten cents more per case gross margin, not necessarily ten cents per case net margin.

Q. Well, if you both had identical operating costs and volume, you would have the identical margin of profit, would you think?

A. Yes.

Q. And the same would be true for him if he received ten cents rebate on all of his commodities from the various processors and sold them at the same price you were selling yours, would it not?

A. Yes.

Q. I think that is all.

Redirect Examination by Mr. McBride.

Q. Mr. Flinton, do you know whether or not the turnover on your Morton's blue package salt is the same as that on the blue package of all of your competitors?

A. No, I think not.

Q. It could be greater or less volume?

A. Yes.

Q. Would that be true with respect to volume?

A. Yes.

Q. Do you know whether or not the operating ex-
3514 penses of all of your competitors are the same as yours?

A. I do not.

Q. It could be greater or less than your costs, is that correct?

A. Yes.

Q. No further questions.
(Witness excused.)
Trial Examiner: Five-minute recess.
(Whereupon, a five-minute recess was taken.)
Trial Examiner: We will proceed.
Mr. McBride: Mr. Examiner, I call as my next witness on behalf of the respondent Mr. Marvin G. Hall.

MARVIN G. HALL, was thereupon called as a witness for the respondent, and having been first duly sworn, testified as follows:

Direct-Examination by Mr. McBride.

Q. Will you state your name and address for the record?
A. Marvin G. Hall, Durham, North Carolina.
Q. What is your occupation, Mr. Hall?
A. I am in the wholesale grocery business.
Q. With what company or concern?
A. Draughon-Hall Company.
Q. Is that name hyphonated?
A. Yes.
Q. And that is located in Durham, North Carolina?
A. Yes.
3515 Q. Are you the same Mr. Hall who testified as a witness on behalf of the Commission in Winston-Salem, North Carolina, several months ago in this case?
A. Yes.
Q. How long have you been connected with Draughon-Hall Company?
A. Since 1929.
Q. What business is that company engaged in?
A. In the wholesale grocery business.
Q. In what business were you engaged prior to 1929?
A. I was employed by the wholesale grocery firms there before that.
Q. But you have been connected with Draughon-Hall Company since 1929?
A. Yes.
Q. What kind of wholesale grocer is Draughon-Hall, a cash and carry or service grocer?
A. A service grocer.

Q. By that you mean delivery and credit and salesmen?

A. Yes.

Q. Does your company do any cash and carry business at all?

A. We have some trade that come by and pay cash and carry it with them. A few of them.

Q. That is incidental to your operation service in the wholesale grocery business?

A. Yes.

Q. What is your position with the Draughon-Hall Company?

A. I am the manager and owner.

3516 Q. As manager and owner, do you do any of the buying for your company?

A. Yes Sir, practically all of it.

Q. Do you fix any of the resale prices?

A. Yes Sir, all of them.

Q. All of them?

A. Yes.

Q. Approximately how many commodities, having in mind all sizes and brands, does your company handle, eliminating any restrictions due to war conditions?

A. Well, around probably two thousand items.

Q. Does your company handle table salt items?

A. Yes.

Q. Will you describe what items are handled by your company now, referring only to table salt items?

A. I handle round packages and square packages and pound and a half packages and four and ten-pound cloth bags.

Q. You refer to round packages, do you refer to Morton's round blue package?

A. Yes.

Q. Have you handled those items for some time, those items you have just described?

A. Yes, for the past twelve years.

Q. Can you estimate, Mr. Hall, what percentage of your total gross sales are accounted for by the gross sale of table salt items during an annual period?

A. It would be less than one percent.

Q. What is the invoice price, if you recall on

3517 Morton's blue package?

A. $1.50.

Q. Do you recall how long that price has been in effect?

A. I should say five years or more.

Q. What is the resale price on Morton's blue package?

A. $1.60.

Q. How long has that been in effect, if you recall?

A. I should say at least five years.

Q. In fixing the resale prices on the various commodities of all kinds that your company handles, what factors do you take into consideration?

A. The volume we handle and the turnover.

Q. Do you take into consideration the cost price?

A. Yes.

Q. Do you take into consideration to any degree prices of competitors?

A. Yes, sir.

Q. You say that your company extends credit to its customers, is that correct?

A. Yes.

Q. Is that in any way a cost factor to be considered in the resale prices on commodities?

A. Yes.

Q. Will you describe in what way that would be a factor?

A. Well, it makes the costs of business greater to carry these accounts.

Q. In other words, when you have to become a banker, that makes that a cost in doing business?

3518 A. Yes.

Q. In extending credit, do you at any time suffer any credit losses?

Mr. Haslett: I object to that, I don't see the materiality of that question in the issue in this case, whether he suffers any losses because he extends credit. What has that to do with price discrimination?

Mr. McBride: Mr. Examiner, I simply want to establish the cost factors to which the witness is testifying.

Trial Examiner: Objection over-ruled. You may answer.

Q. Do you suffer credit losses?

A. Yes.

Q. Do those credit losses become a cost factor in doing business?

A. Yes Sir.

Q. The various factors which you have testified to as being regarded by you in fixing the resale prices, were those factors considered in fixing the price on Morton's salt?

A. Yes.

Q. And after considering those factors, you arrived at $1.60, is that correct?

A. Yes.

Q. Does your company receive any quantity discount on Morton's blue package?

A. Yes.

3519 Q. How much is that?

A. Ten cents per case.

Q. Do you recall when you first began receiving that?

A. Yes, in the fall of 1938.

Q. What was the resale price on Morton's blue package prior to the fall of 1938?

A. $1.60.

Q. Was any change made in that after you received the quantity discount?

A. No Sir.

Q. If the ten cent quantity discount to which you have just referred were abolished tomorrow, what change, if any, would you make in your $1.60 price, all other factors remaining the same?

A. Not any.

Q. How was the ten cent quantity discount handled by your company?

A. It is entered as a cash sale when it is received and is not credited against our cost of merchandise.

Q. What do you regard as the cost of Morton's blue package, the price of $1.50 or $1.50 less ten cents?

A. I figure my sales on $1.50.

Q. And the ten cents item simply becomes an entry on your cash?

A. Yes. It shows that much extra profit at the end of the year in the business.

Q. Do you know in advance from time to time, Mr. Hall, whether you are going to receive the ten cent

3520 quantity discount?

A. No.

Q. Have you at any time, Mr. Hall, made any special effort from the standpoint of sales effort for the resale of Morton's blue package?

A. Yes, sir.

Q. What type of sales effort do you employ with respect to sale of Morton's blue package?

A. We have special drives on different items. We take a week of special sale on one item, and the next week we will use something else.

Q. Did you select them from your whole items of commodities?

A. Yes.

Q. Have you ever done that with respect to Morton's blue package?

A. Yes, sir.

Q. How frequently has that been done in the last few years, if you recall?

A. We will get the salt item two or three times a year.

Q. Will you describe the nature of the special drive when you handle Morton's blue package salt, that is, how it is done, how you operate to make it a special drive?

A. We just carry a package item that we want to specialize that week, we carry a package along with us.

Q. When you say "we", who do you mean?

A. Our salesmen.

Q. Your salesmen carry an item as a special item along with them?

3521 A. Yes. I do part of that myself.

Q. And that is the manner in which you handle the special sale of Morton's blue package?

A. Yes.

Q. At the time of the special drive, is there any reduction made in the resale price?

A. No.

Q. It is still offered at $1.60?

A. Yes.

Q. Have you observed the results of special drives on Morton's blue package?

A. Yes.

Q. What were those results?

A. Well, the sales were greater. Any time you carry a package along with you and show it to the merchant, why, his mind is on it more and he is likely to buy it when you have a sample along with you, as something you specialize on and talk.

Q. Was that the experience you had with the other commodities?

A. Yes, any kind.

Q. What is the current resale price with respect to the 36-one and a half pound squares that you said you handled in addition to Morton's blue package?

A. Ninety-five cents.

Q. Is there any other table salt item which your company handles that has a higher resale price than Morton's blue package?

3522 A. No.

Q. All other table salt items sell at a lower price than Morton's blue package?

A. Yes, they all sell lower. I don't handle anything else.

Q. That is, other than the one and a half-pound and the blue package?

A. Yes.

Q. Have you ever been in the wholesale salt business alone, Mr. Hall?

A. No, sir.

Q. Have you ever heard of any wholesaler who has been?

A. No.

Q. Wholesalers generally handle about the same size line that your handle in your territory, is that correct?

A. Yes.

Q. Do you know, Mr. Hall, the prices at which your various competitors in Durham sell their various salt items?

A. I don't except on Morton's.

Q. On Morton's blue package?

A. Yes, that is all we carry. I am not interested in the other.

Q. But as to the other items which they handle in the salt line, you are not familiar with their—

Trial Examiner: Mr. McBride, he said he was not.

Q. Are you familiar with the resale prices of your competitors in the Durham territory with respect to all other commodities that you and your competitors handle?

A. Yes.

3523 Q. To what degree?

A. Well, I come in contact with the retail trade myself, part of it. and so I hear the other man's price at the same time I give them mine. We hear what the others' prices are.

Q. From that have you found at different times, Mr. Hall, that your resale prices are in all cases lower than those of your competitors?

A. Some items might be lower and some higher.

Q. But at no time are they all lower or all higher?

A. No.

Q. Do you know the purchase price paid by your competitors for any of the sale items handled by your competitors, yourself?

A. No, sir.

Q. Do you know the purchase price paid by your competitors with respect to all of the other commodities that your company handles and your competitors handle?

A. No.

Q. They could be either greater or less than the purchase price paid by your company?

A. Yes.

Q. Mr. Hall, you testified that turnover had something to do with fixing of the price of $1.60 on Morton's blue package, is that correct?

A. Yes.

Q. Do you know approximately what your turnover is annually on Morton's blue package?

3524 A. We turnover about eight times a year.

Q. Is that low, average or high with respect to the turnover on general lines?

A. Well, that is medium. Some items turn faster and some slower.

Q. If your turnover were three times as great, would that have a bearing on the $1.60 price?

A. Yes.

Q. What would be the effect?

A. Well, the profit would be greater but the turnover would be more.

Mr. Haslett: I move to strike that as it is not in response to the question asked.

Trial Examiner: Objection over-ruled. I think it is responsive to the question asked.

Q. If you received a turnover, Mr. Hall, of two times a year that of the turnover which you now receive on Morton's blue package, would that fact in any way affect your resale price?

A. Yes, sir.

Q. What would that effect be?

A. Well, the greater the turnover, the less profit you can put on an item.

Mr. Haslett: Same objection.

Trial Examiner: Objection sustained. I assume that is accompanied by a motion to strike it?

Mr. Haslett: Yes.

Trial Examiner: Strike it.

3525 (Discussion off the record.)

A. It means that if my turnover was twice a year instead of eight times, what effect would that have, is that the question?

Trial Examiner: That is the question.

A. Yes, sir, that would affect me. I would have to increase my price because my sales would be less.

By Mr. McBride:

Q. Mr. Hall, is spoilage a factor to be considered in the cost item in fixing the resale price of various commodities handled by your company?

A. Yes.

Q. To what degree do you have spoilage in the salt item?

A. Not any.

Q. But there is spoilage on other liens of commodities?

A. Yes.

Q. That is correct?

A. Yes.

Q. Does the fact that there is no spoilage on the salt item tend to result in a lower or higher price than it would be if there was spoilage?

Mr. Haslett: I object.

Trial Examiner: Objection sustained.

Mr. McBride: On what basis?

Mr. Haslett: It has about as much to do with this case as the invasion of Africa.

Trial Examiner: I sustained the objection. If you want to make any statement for the record, Mr.

3526 McBride, you may do so.

Mr. McBride: Well, I don't care to show it in the record. I would like to know or be enlightened as to what the basis for the objection is. As yet, I have not been enlightened on that.

(Discussion off the record.)

Trial Examiner: On the record.

Mr. McBride: Note an exception to the ruling on the objection on the basis of irrelevance.

Trial Examiner: Note the exception.

By Mr. McBride:

Q. With reference to table salt items, are all the items that your company handles purchased from the Morton Salt Company?

A. Yes.

Q. Has that been true for some time?

A. Yes.

Q. Approximately how long, if you recall?

A. Twelve years.

Q. No further questions.

Cross-Examination by Mr. Haslett.

Q. Mr. Hall, from whom do you purchase your one and a half-pound square packages of salt?

A. From the Morton Salt Company.

Q. I believe you stated you sell those at ninety-five cents?

A. Yes.

Q. Does that package contain the same amount of 3527 salt as the round package salt?

A. No sir, not in pounds it does not, more package.

Q. How many packages to the case?

A. Thirty-six of the pound and a half.

Q. How many packages to the case of round?

A. Twenty-four.

Q. I believe you stated that on occasions you do some missionary work for Morton's Salt Company, is that correct?

A. No, I do for myself.

Q. You do for yourself?

A. Yes.

Q. And that is to increase your sales?

A. Yes.

Q. And thereby increase your purchases?

A. Yes.

Q. You stated, Mr. Hall, that prior to 1938, you did not receive the ten cents rebate from the Morton Salt Company?

A. No.
Q. But you sold the commodity at the same price?
A. Yes.
Q. Prior to 1938, then, you were making ten cents per case, is that correct?
A. Yes.
Q. And since 1938 you have been making twenty cents per case, is that correct?
A. Yes.
Q. Because you get the discount?
3528 A. Yes.
Q. Now, you could have reduced the price to $1.50 after 1938 and still make the same profit, could you not?
A. Yes.
Q. Does Draughon-Hall purchase from Morton Salt Company for resale to its customers five thousand cases of Morton's free running and iodized salt in any consecutive twelve-month period?
A. No.
Q. You stated that the cost of the commodity of $1.50 is the basis for which you use in arriving at your resale price of $1.60?
A. Yes.
Q. What is the actual cost to you?
A. Cost of the round package of salt?
Q. Yes?
A. Well, it figures $1.40.
Q. Now, you stated volume and turnover and cost of the commodity and competition are the factors that are employed by you in arriving at your resale price on Morton's round package salt?
A. Yes.
Q. What do you mean by turnover?
A. Well, that is turn over of your floor stock so many times a year.
Q. Turnover to whom?
A. To the purchasers.
Q. To your customers?
3529 A. Yes. The greater your turnover the less your overhead is.
Q. About eight times a year you sell your complete floor stock to your customers of Morton's round package salt, is that correct?
A. Yes.

Q. Now, you say that is a factor in arriving at the $1.60 price?

A. Yes.

Q. And volume, the number of packages that you sell is also a factor?

A. Yes.

Q. And the cost of the commodity is important?

A. Yes. But the turnover is the only one that would adjust the resale price.

Q. Am I correct when I understand that?

A. Yes, that is the way I figure my prices.

Q. You say your turnover is the only factor that would enter into changing the resale price?

A. Yes, sir.

Q. Why is that?

A. Well, if I cannot turn my stock over but one time a year it would cost me a lot more to handle that package or that item than it would if I turned it ten times a year.

Q. Now, suppose you had turnover of just two times per year but you had a greater volume than the turnover on your eight times a year, would that have anything 3530 to do with the resale price?

A. Yes, sir.

Q. So there are other things that would affect the resale price besides the turnover?

A. Yes.

Q. If the cost of the commodity dropped fifty per cent, that would have something to do with the resale price?

A. Yes.

Q. And if competition would begin to sell at a much lower price, you would have to change your price to meet the competition, would you not?

A. Yes, if I kept my volume, I would.

Q. Otherwise, you would not get any business?

A. That is right.

Q. Mr. Hall, have you ever, since you have been connected with Draughon-Hall, sold Morton's round package salt for less than $1.60 a case to any customers?

A. No.

Q. Have you ever sold it to any customers at more than $1.60 a case?

A. No sir, not since the package has been like it is now.

Q. That was some time in 1935, was it, I believe you testified?

A. Yes sir, it was back several years ago.

Q. Did I understand you correctly, Mr. Hall, to state that Morton's salt was your only source of supply for salt?

A. Yes, that is the only one that we carry. We
3531 handle no other brand except Morton's.

Q. And that is all grades of salt?

A. Yes, sir.

Q. I think that is all.

Redirect Examination by Mr. McBride.

Q. In answer to one of Mr. Haslett's questions, Mr. Hall, you stated that the turnover would be the only factor that would tend to change your price?

A. Yes.

Q. You mean that would be true under all circumstances or only when all other factors entering into the price of blue package would remain the same?

Trial Examiner: Let the record show that Counsel requested permission to withdraw the preceding question.

Mr. Haslett: Mr. Examiner, the question prior to the one that has just been withdrawn is not in accordance with the testimony. Mr. McBride stated that he was under the impression that Mr. Hall testified that the turnover was the only factor that would change the resale price. Mr. Hall testified that all of these factors would have something to do with the resale price.

Mr. Trial Examiner: Off the record.

(Discussion off the record.)

Trial Examiner: Mr. McBride, if you will put your question to the witness in the form agreed upon by the discussion off the record, you may do so.

By Mr. McBride:

3532 Q. Mr. Hall, in arriving at the resale price on Morton's blue package or any other commodity, do you take into consideration all of the pricing factors to which you have testified to, is that correct?

A. Yes.

Q. If turnover were the deciding factor with respect to a change in price, then—strike the question. If there were any instants when the price was changed by reason of turnover alone, would it not be true, Mr. Hall, that under

such circumstances all other cost factors such as cost of merchandise, volume, resale price, etc., would have to remain the same as they were before?

A. Yes, sir.

Q. And would it also be true, Mr. Hall, that if anyone of the various pricing factors to which you have testified were changed, that you would have to reconsider the resale price to determine whether or not that should be changed by reason of the bearing in that particular price factor?

A. Yes, sir.

Q. That is all.

By Mr. Haslett: Nothing further.

Trial Examiner: Thank you very much, Mr. Hall.

(Witness excused.)

3535 Main Hearing Room,
Federal Trade Commission Building,
Washington, D. C.
Monday, November 16, 1942.

Met, pursuant to agreement and notice, at 1:00 p. m.

Before:

James A. Purcell, Trial Examiner.

Appearances:

John T. Haslett, Esq., attorney for the Federal Trade Commission.

L. M. McBride, Esq., 310 South Michigan Avenue, Chicago, Illinois, for the Respondent.

3537 Mr. McBride, are you ready to proceed with your witness?

Mr. McBride: Mr. Examiner, I will call as the first witness on behalf of the Respondent, Mr. Clarence A. Schauman.

CLARENCE A. SCHAUMAN was thereupon called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct Examination by Mr. McBride.

Q. Mr. Schauman, will you state your name and address for the record?

A. Clarence A. Schauman, Baltimore, Maryland.

Q. What is your occupation, Mr. Schauman?

A. I am president of the Terminal Warehouse Company.

Q. In Baltimore?

A. In Baltimore.

Q. Were you ever connected with the C. D. Kenny Company?

A. I was the executive vice-president and merchandising man for C. D. Kenny from 1935 to 1939.

Q. Where were your offices at the time you were connected with them?

A. 520 South Utah Street.

Q. Is that the principal office of C. D. Kenny Company?

3538 A. That was the main office.

Q. You were the executive vice-president during the entire period from 1935 to 1939. Is that correct?

A. That is correct.

Q. What was your occupation prior to being connected with C. D. Kenny Company, Mr. Schauman?

A. I had been merchandising man, buyer, and vice-president of J. W. Crook Stores Company in Baltimore, general food organization, having a chain food store organization comprising some 151 stores.

Q. How long did you hold that position, Mr. Schauman?

A. I held that position about eleven years.

Q. Prior to that, Mr. Schauman, what was your occupation?

A. Wholesale grocer, Baltimore City, A. Schauman and Son. I was a junior member of the firm.

Q. For how long?

A. Twenty-one years.

Q. Will you describe briefly, Mr. Schauman, what your duties were as executive vice-president of C. D. Kenny Company, for the period indicated?

A. I was brought in to the C. D. Kenny Company by the Safe Deposit Company of Baltimore. They were trustees of the Kenny Estate. Mr. Nelligan, the president of the Safe Deposit Company, thought that something could be done with the Kenny Company other than the selling of sugars, teas, and coffees. Kenny was having a rather
3539 hard time at that time, and I was engaged to pull it out. In doing that I—

Mr. Haslett: Mr. Examiner, I hate to break in on the witness' answer, but I do not think we are interested in all these various aspects of the C. D. Kenny Company. I think this is irrelevant and immaterial to the issues of the case.

Trial Examiner Purcell: Is that an objection?

Mr. Haslett: Yes, sir.

Trial Examiner Purcell: Do you consider the ramifications of the C. D. Kenny Company to be pertinent to the issues, Mr. McBride?

Mr. McBride: No. I am particularly interested in the witness' duties while he was with the C. D. Kenny Company.

Trial Examiner Purcell: Then, if you will have your witness confine himself to that. Objection sustained.

By Mr. McBride:

Q. Will you tell us about that?

A. To put in to the C. D. Kenny Company merchandise other than coffee, tea, and sugar which had been making up the principal outlet of the company, and salt was one of the first things that I put in.

Q. Did you have anything to do with the purchasing of the grocery commodities, Mr. Schauman?

A. These all came under my supervision for the
3540 various branches, and my direction, all purchases for the Baltimore, Hagerstown, Washington, Cumberland, and so forth.

Q. Your jurisdiction extended over all branches of C. D. Kenny Company?

A. Yes, sir.

Q. You stated, Mr. Schauman, that you started to handle salt when you became executive vice-president of C. D. Kenny Company?

A. Yes, sir.

Q. Did you handle salt during the entire period from 1935 to 1939?

A. The entire period.
Q. You did?
A. Yes, sir.
Q. Will you describe the kinds and types of salt that you handled, referring now only to table salt items, as nearly as you can recall?
A. We put in Morton Salt in Baltimore. That was the only brand we handled in Baltimore. We had some local brands in the south that were known there. I am speaking of Avery and Jefferson Island, and International. That is about all. There were others perhaps.
Q. You refer to Morton Salt; is that the blue package free running and iodized?
A. "When it rains it pours."
3541 Q. That was handled throughout the period of your executive vice-presidency?
A. Yes, sir.
Q. Did you do any of the purchasing of Morton's blue package salt in Baltimore, Mr. Schauman?
A. I did all of it.
Q. To what extent did the branch managers have—
A. (Interposing.) What?
Q. What jurisdiction, if any, did the branch managers have over the purchases of salt items while you were executive vice-president?
A. They could purchase, under my O. K., any brand that they wanted. They could not purchase anything otherwise.
Q. What rights did the branch managers have to purchase salt items? Could they purchase any salt items that they wanted to without consulting you?
A. Oh, no. He had to have my permission to handle any item that he had on his shelves. I gave the O. K. on all of those things.
Q. During that period, Mr. Schauman, what was the invoice price of Morton's blue package salt to C. D. Kenny Company?
A. I think it was $1.50 per case.
Q. $1.50 per case?
A. That is right.
Q. Did those invoices come to your desk, Mr. Schauman?
3542 A. They all came to my desk for O. K.
Q. So that you saw all the invoices for sales of Morton's blue package salt which were made to the C. D. Kenny Company?

A. Yes, sir.

Q. Did the C. D. Kenny Company, during that period, or at any time, receive a quantity discount from the Morton Salt Company, on the blue package?

A. Up until the time we started?

Q. At any time from 1935 to 1939.

A. Yes, sir. They received a quantity discount, but we had to make it first. When we started, we did not know whether we would make it or not. In other words, we had to buy 5,000 cases in order to get it, and of course I could not tell whether we were going to sell that many or not until we had gone through the process of selling it. There was no way that I could tell it otherwise.

Mr. Haslett: Mr. Examiner, I move that the answer of the witness be stricken from the record as predicated upon a voluntary statement of the witness, not being responsive to the question except as to the first few words which were: "Yes, we received a quantity discount." I do not believe the rest of it is responsive to the question, and I move that it be stricken.

Mr. McBride: If the Examiner please, the witness has explained that he did receive a quantity discount, but
3543 not for the entire period because when they started they first had to start out and qualify. It seems to me that unless he gives his full answer that any other answer would be incomplete, and would be misleading.

Trial Examiner Purcell: The motion to strike is overruled. It is obvious that the same evidence would be brought out by later questions, so it seems to me that in order to save the record, we will let it stand. Proceed.

By Mr. McBride:

Q. In what form did you receive the quantity discount from the Morton Salt Company, Mr. Schauman?

A. Check.

Q. Check?

A. Check.

Q. How long between times did you receive it? In other words, how often was that received?

A. An average of once a month.

Q. An average of once a month?

A. Yes, sir.

Q. What was done with it when it was received?

A. It was deposited by the C. D. Kenny Company to the account of the C. D. Kenny Company.

Q. And—

A. (Interposing.) And it was run through our general bookkeeping as a quantity discount.

3544 Q. Was it credited in any way to salt in particular, or was it credited in more particularity to the Morton blue label package salt?

A. It was credited to Morton blue package salt, and salt, also, especially where they handled nothing but the one brand.

Q. That was handled in that fashion on the general books of C. D. Kenny Company at Baltimore, Maryland?

A. That is the manner in which it was credited, in addition to which it was credited to each of the branches also with the amount that they had sold. They were given credit for it.

Q. With respect to the entry on the general books of the C. D. Kenny Company of Baltimore, was that procedure followed by you during the entire period 1935 to 1939?

A. The entire four years.

Q. It was?

A. Yes.

Q. Now, what credit, if any, was given to the branches of C. D. Kenny Company for the quantity discount on Morton's blue package salt?

A. The exact amount that they handled, their part of the ten cents, of course, which was earned by the various branches.

Q. Was that paid in cash by the Baltimore offices to the C. D. Kenny Company branches?

A. No.

Q. What was done with it?

3545 A. Merely a credit on the books at the end of the year. That was credited to the branches, and was reflected at the end of the year.

Q. As a bookkeeping entry?

A. That is right. No money passed to the branches.

Q. That credit was given on the books to the various branches at the end of each year? Is that correct?

A. Yes, sir.

Q. Did you have anything to do, Mr. Schauman, during the period 1935 to 1939, with fixing the resale prices of Morton blue package salt?

A. I regulated the cost of the resale prices.

Q. When you say "regulated," do you mean with re-

spect to each of the branches, or only with reference to the Baltimore house?

A. All of the branches, and the Baltimore house also.

Q. How did you regulate that, Mr. Schauman? I mean, what mechanical procedure was followed,—still referring to Morton blue package salt.

A. We were satisfied with a 10 per cent gross mark-up. Our overhead along that time was about six and one-quarter per cent, so a ten per cent gross mark-up made a gross profit which was satisfactory to us.

Q. Did you give any instructions to your branches with respect to what mark-ups should be applied?

3546 A. Yes. The instructions were that if they could not get ten per cent out of it, that we would not permit them to handle it.

Q. Was that in the form of written directions to the branches?

A. No, probably some of it had been written, but most of it was in telephone conversations, or in house meetings, or various ways of contact with them.

We were not a whole wholesale grocery, and by that I mean that we did not handle all of the twelve hundred odd items. We specialized in certain items. We reserved the right at any time to change our prices, and if an item should be selling at a loss, we would throw it out. We only wanted to handle items that we could handle at a profit.

Q. You say the instructions to the branches to place a ten per cent mark-up on Morton blue package; the ten per cent was on what basis, on the $1.50, or on the $1.50 less 10 cents?

A. $1.50 plus 10 per cent or $1.65.

Q. Those were the instructions you gave your branches?

A. Yes, sir.

Q. To your branch managers?

A. Yes, sir.

Q. Was there any variation from those instructions—

A. (Interposing.) I beg your pardon?

Q. I will restate the question. Did you have any-

3547 thing varying those instructions to your branch managers at any time during the period from 1935 to 1939?

A. No. Those instructions still stood without variation.

Q. During the time in question; that is, 1935 to 1939, did you have a branch, Mr. Schauman, in New Orleans, Louisiana?

A. New Orleans?
Q. Yes.
A. Yes, we did.
Q. Were those instructions given to your branch manager in New Orleans, Louisiana?
A. Yes, sir. They were given to our branch manager there.
Q. Did you have, during that period, a branch house in Jacksonville, Florida?
A. In Jacksonville, Florida, we had a branch house during that time.
Q. Were those instructions—
A. Yes?
Q. Were those same instructions given to your branch manager with reference to the Morton blue package salt?
A. Yes, sir.
Q. That they were to be sold at 10 per cent mark-up on the $1.50 price?
A. Yes, sir.
Q. Or $1.65?
A. Yes, sir.
3548 Q. During this period of time did you have a branch house located in Macon, Georgia?
A. Macon, Georgia?
Q. Yes.
A. Yes, sir. We did.
Q. Were those same instructions given to the branch manager of your house which was located in Macon, Georgia, with regard to the Morton blue package salt?
A. Yes, sir. They were.
Q. During this period of time did you have a branch house located in the City of Atlanta, Georgia?
A. Yes, we had a house in the City of Atlanta, Georgia, during this time.
Q. Did you give those same instructions to the branch manager of the house at Atlanta, Georgia, that there was to be this 10 per cent mark-up on the $1.50 price on Morton's blue package salt?
A. Yes, sir.
Q. Did you also during this period of time have a branch house located in Greenville, South Carolina?
A. Yes, sir. We had a place in South Carolina, in the City of Greenville. Yes, sir.
Q. And did you give those same instructions to the

branch manager of your house in Greenville, South Carolina, with regard to Morton blue package salt?

3549 A. Yes, sir.

Q. Did you have—

Mr. Haslett: (Interposing.) Mr. Examiner, I think the question has been asked several times, and he has asked if he gave those instructions to all of the branches, and he said he did. It seems to me that this would cover it entirely.

Trial Examiner Purcell: He is entitled to bring out the particular cities that were in the same territory where our hearings have been. Is that your idea, Mr. McBride?

Mr. McBride: Correct. Particularly in view of the fact that some of these houses were out of existence at the time that the hearings were held.

Trial Examiner Purcell: I apprehend that. The objection is overruled.

By Mr. McBride:

Q. During that period, Mr. Schauman, did you have a branch in Columbia, South Carolina?

A. Yes, sir. We had a branch in Columbia, South Carolina, during that period of time.

Q. And were the same instructions with regard to Morton blue package salt given to the manager of the house in Columbia, South Carolina, as you have outlined?

A. Yes, sir. They were that he was to sell at 10

3550 per cent over the case price of $1.50 or a price of $1.65.

Q. Likewise, did you have a branch also during this period of time at Charlotte, North Carolina, Mr. Schauman?

A. At Charlotte, North Carolina? Correct.

Q. Were the same instructions given to your branch manager of the house at Charlotte, North Carolina, that you have stated were given to the branch managers of these other houses?

A. That is correct.

Q. During this same period of time did you have a branch house located in Winston-Salem, North Carolina?

A. That is correct.

Q. And were the same instructions given to the branch managers there that were given to the branch managers of the other houses to which you have made reference?

A. Yes, sir. The same instructions were given them that were given to the other branch managers that we had.

Q. Do you know whether or not any of the branches of C. D. Kenny Company from 1935 to 1939 ever sold Morton's blue package salt for any price other than $1.65 per case?

A. I—

Mr. Haslett: (Interposing.) I object to that. I do not see how this witness can testify during this four year period that no branch manager of the C. D. Kenny Company ever sold any of Morton's blue package salt at less than $1.65.

Mr. McBride: That is not the question. I am
3551 simply asking this witness for his knowledge. That is all.

Trial Examiner Purcell: Read the question.

(The question referred to was read by the reporter as follows:

"Q. Do you know whether or not any of the branches of C. D. Kenny Company from 1935 to 1939 ever sold Morton's blue package salt for any price other than $1.65 per case?")

Trial Examiner Purcell: Let the witness answer if he knows.

Do you know of your own knowledge?

The Witness: I gave instructions not to. No, I think that would cover it.

Trial Examiner Purcell: Do not argue, please.

The Witness: I could not testify absolutely whether they did or not. I gave instructions not to do so. I would hesitate—

Trial Examiner Purcell: Now, please do not argue.

The Witness: I was going to say this, if you will permit me—

Trial Examiner Purcell: You cannot say anything, if you please. Counsel will give you every opportunity to straighten out your answer and explain it, but you cannot volunteer.

The Witness: Here is the point, whether the sale
3552 was—

Trial Examiner Purcell: (Interposing.) You cannot volunteer anything, if you please.

The Witness: If it were a proposal or if it were not a proposal would make a difference.

Trial Examiner Purcell: Mr. McBride, will you instruct your witness what he may and may not do, or shall I do so?

Mr. McBride: I think we had better drop it there.

The Witness: All right.

Trial Examiner Purcell: I told you three times, sir. I do not want to get into any argument with you.

Mr. McBride: I believe that is all I have. You may cross-examine.

Trial Examiner Purcell: Cross-examine.

Cross-Examination by Mr. Haslett.

Q. Mr. Schauman, will you state the form of discount that you received from the Morton Salt Company during the period from 1935 to 1939?

A. Ten cents a case.

Q. Ten cents a case?

A. Yes, sir.

Q. And you said that that was granted to you and by you credited to the general salt account of the C. D. 3553 Kenny Company? Have I stated that correctly?

A. That is correct, subject to each branch receiving its proportionate amount of it, I would say.

Q. Was the branch notified?

A. Yes, sir.

Q. The branch was notified that they had it, but what that really meant was that the branch was notified that they had a credit of so much money due to the fact that the branch had purchased so many cases of Morton salt; Morton blue package salt, and had sold it during twelve consecutive months? In other words, during a twelve consecutive month period?

A. That is correct.

Q. I believe that you said the basis for the $1.65 price was that of $1.50 as the purchase price from the Morton Salt Company?

A. A cost of a dollar and a half and a selling price of $1.65.

Q. When you say the cost do you mean the actual cost per case?

A. Actual cost to me $1.50; $1.50.

Q. Is the actual cost per case?

A. Yes, sir.

Q. What was the ten per cent discount—

A. (Interposing.) Ten cents per case—.

Mr. McBride: I object to the question simply be-
3554 cause counsel inadvertently used ten per cent rather than ten cents per case.

Trial Examiner Purcell: Counsel will consider the objection and reframe his question if necessary.

Mr. Haslett: Yes. I meant to say ten cents per case.

By Mr. Haslett:

Q. Ten cents per case.

A. Ten cents per case was the factor to be earned. I do say I did not know whether I was going to get the ten cents or not. In order to get the ten cents per case I had to sell five thousand cases of blue package salt.

Q. I see.

A. You see, if I sold 4,999 cases of salt in a twelve months period I did not get ten cents per case, so I positively could not state that I was going to get ten cents per case until I had actually done so. A great many things can happen during any twelve months period.

Q. Did any single branch of C. D. Kenny Company purchase 5,000 cases of Morton's blue package salt during any twelve months consecutive period?

A. Nowhere near it.

Q. Nowhere near it?

A. That is right.

Q. Was it to the interest of the C. D. Kenny Com-
3555 pany to purchase Morton blue package salt at a low price?

A. At the lowest possible price.

Q. Why did you want to purchase it at the lowest possible price?

A. Morton Salt, if you understand what it was, and why we wanted to sell it, it was the salt which had the background of tremendous national advertising. Naturally, as a buyer, it was my duty to buy everything at the lowest price, everything, not only Morton salt, but Old Dutch Cleanser, Kellogg's Corn Flakes, and anything of that kind, it was my duty to buy it at the lowest price that I could possibly buy it at and to sell it as high as I could sell it and get the volume.

Q. And you purchased at the lowest prices any commodities which might be sold by C. D. Kenny Company?

A. Yes, sir. I did.

Q. In the purchase of commodities, would it be proper to say that the lowest price of any commodity is the main factor, so far as C. D. Kenny was concerned?

A. That is right.

Q. The purchase price of the commodity is used in arriving at the resale price?

A. The cost price.

Q. The cost price?

A. Yes, sir.

Q. The ten cent discount that you received from
3556 the Morton Salt Company on the so-called quantity basis, was used as an extra added value to the profit and loss sheet of C. D. Kenny Company?

A. I cannot say that. I would like to say that if it would help you, but I cannot say that because there was always an uncertainty as to whether we would earn it or not.

Trial Examiner Purcell: Read the answer.

(The reporter read the question and the answer as follows:

"Q. The ten cent discount that you received from the Morton Salt Company on the so-called quantity basis, was used as an extra added value to the profit and loss sheet of C. D. Kenny Company?

"A. I cannot say that. I would like to say that if it would help you, but I cannot say that because there was always an uncertainty as to whether we would earn it or not.")

Trial Examiner Purcell: Mr. Witness, keep your voice up. It is necessary that we hear you up here as well as down there. Proceed.

By Mr. Haslett:

Q. I believe you stated, Mr. Shauman, that on occasion you have notified your various branch managers not to sell Morton salt blue package for less than $1.65 per case?

A. Not to sell it under the ten per cent mark-up.

3557 Q. Not under the ten per cent mark-up?

A. Not under the ten per cent mark-up. That is correct, sir.

Q. That ten per cent mark-up would be $1.65 per case?

A. Yes, sir.

Q. You do not know of your own knowledge whether or

not your instructions were ever violated by your branch managers?

A. I am compelled to ask you a question in order to answer your question because it is not clear to me what you mean by your question. Do you mean whether or not the sale was consummated at a price, or just the proposal? There is an important difference there. It is important that I should know what you mean.

Q. Let me ask you another question which I think will take care of that.

A. If you please.

Q. Do you know whether or not of your own knowledge, of course, Mr. Schauman, whether or not the branch managers, or any of the branch managers of C. D. Kenny Company had ever made a sale—

A. (Interposing.) Consummated.

Q. Consummated a sale to any of the customers of C. D. Kenny Company at a price less than $1.65?

A. I do not know of any.

Q. You would not say it had not happened?

3558 A. Oh, no. That is why I wanted to segregate that. Proposals come thick and fast in our business.

Q. It might have been done?

A. It could have been done.

Q. Tell me why you instructed your various branch managers not to sell at less than $1.65 per case.

A. This is why: I was not interested in any commodity whatever that did not bring a minimum of ten per cent mark-up. I would not handle it if I could not get ten per cent out of it.

Q. Assuming, Mr. Schauman, that you knew that you were going to get a ten per cent—first, let us take this situation: That you knew that you were going to get ten cents per case allowance from the Morton Salt Company during a twelve months period, that you knew that you were going to qualify, would that have had any bearing upon the resale price of the commodity?

A. None whatsoever.

Q. Why?

A. Because assuming that we would get it, that would offset advertising or special promotional work, or a great many other little details that could be helped towards accomplishing volume. Do I make myself clear to you?

Q. Do you not mean that the ten cents per case discount received from Morton Salt Company would be used
3559 to defray the expenses of advertising and other promotional activities of your company in connection with the Morton Salt Company's own activities along that line?

A. We used that ten cents—that ten cents was velvet, and was used towards specializing in salt.

Q. You considered that as velvet?

A. I considered it would help me to make the quantity price, because I could drive the men on it to sell it more, I could drive them out on salt more and more.

Q. Could you not drive a man without the ten cent discount?

A. Ten cents per case, surely, I could. You see, most of the items—this is a long story, most of our items carry a better mark-up than ten per cent. Some items like teas and coffees you can make 25 per cent whereas on some types of canned goods you make 12 per cent or 15 per cent, on the other hand on sugar you only make around 2 per cent. If you have an opportunity to put in an article in any tea, coffee, and sugar house which was nationally advertised and that amount of money would pay you for the specialty work that your men would do on the item, it would then pay you ten per cent gross, I would think that was pretty good business.

Q. Then, you consider that this ten cent discount, that is what I wanted, that you received from Morton Salt Company, was used to compensate you for the special work you did?

A. On salt?

3560 Q. On salt.

A. Yes.

Q. I believe you said, Mr. Schauman, that you said the price of $1.65 was the price agreed upon at which this was to be sold?

A. That is the price that I decided to fix.

Q. Will you tell us just what details you took into consideration in arriving at the figure of $1.65?

A. In arriving at the ten per cent mark-up?

Q. Yes.

A. On my entire sales, I divided it into the expenses, the entire sales expense was divided into the intake that we received from it, and that gave us the per cent that we

called the overhead there. That per cent, during my jurisdiction, fluctuated. I have seen it go as high as 8 per cent, and I have seen it go as low as six and a fraction. So, ten per cent mark-up was a safe mark-up for me to aim at.

Q. Well, the ten per cent was the figure you used, and that was an arbitrary basic figure agreed upon by the executives of your company?

A. I set the figure myself.

Q. You set the figure?

A. Myself.

Q. The ten per cent figure?

A. Yes, sir.

3561 Q. So it was just an arbitrary figure that included cost?

A. Over the overhead. I figured my overhead by using the sales divided into the expense which would be the figure that would represent the overhead that we had to work on. Likewise, in percentage, any figure above my overhead would bring a black figure, whereas any figure which would be less than the figure of our overhead would bring in red figures, and show that we were operating at a loss. Of course, we could not afford to operate at a loss.

Q. I see, sir.

A. Yes.

Q. It was this desire from the standpoint of your company, to purchase, in connection with its purchasing operations, to have the ten per cent discount?

A. Ten per cent?

Q. Ten cents discount.

A. No, no. I am afraid I do not understand your question.

Q. It was the desire of your company, at least from the standpoint of your company's purchasing operations, to have a ten cent discount?

A. Oh, I see your point. No, no. It was necessary for us to handle salt, and inasmuch as I have—inasmuch as I could have made a ten per cent mark-up on salt if I had not received the ten cent quantity discount, we would have to keep right on selling salt at $1.65, and we would
3562 have kept on selling it at that price whether we did or did not get the discount.

Q. Irrespective of whether you got it?

A. Yes.

Q. If the price of salt was $1.60, what would have been your selling price then?

A. $1.76 in that case, if salt was selling at $1.60, because we would simply add 10 per cent to it.

Q. How long was the discount in effect?

A. The ten cents per case?

Mr. McBride: If the Examiner please, I am objecting to that as to how long it was in effect. He may ask the witness how long he received it.

Trial Examiner Purcell: Sustained.

By Mr. Haslett:

Q. How long did your company receive that discount from the Morton Salt Company?

A. We did not qualify the first month that we put it in, or the second—I am just using my memory. I think we qualified about the fifth month and from the fifth month on we received the discount of ten cents per case.

Q. Did you qualify on a monthly basis?

A. No, you have to sell 5,000 cases in a given time. I think, if I am not mistaken, five months we had reached that period, in five months we had reached the amount necessary to qualify. Now, that is a long story, but
3563 that is my recollection of it, as far as it goes to that one brand of salt.

Q. Were you not definitely certain that for the next seven months you would get the ten cents per case discount because you had already earned it?

A. No, sir. I wish that I could have foreseen that, foreseen that we would be able to receive that ten cent discount all of that time. We did not know anything until the end of the period.

Q. How did you know then within the five months period that you had qualified?

A. Because I knew the number of cases of salt that we had purchased, and that amount of purchases by all the branches added up to 5,000 cases.

Q. If you purchased 5,000 cases within the five month period, then the other seven months period you knew you were going to get the discount over and above the 5,000 cases; is that not true, sir?

A. That can be, yes. That can be, but you see always there was the threat of an uncertainty. If you started to slide backwards, why, taking something for granted that

did not take place would not be a good way to run a business.

Q. What do you mean by taking something for granted that did not take place, will you explain that please?

A. Yes, sir. Surely. Suppose that the line would fall off, the Morton Salt Company line, after we had reached
3564 the 5,000 cases that you had known before you were going to get the quantity discount on, then you would not make your quantity purchase because you would not have the volume. I do not think you should take from one month to pay for another.

Q. What I am trying to find out, Mr. Schauman, is whether or not you qualify on a monthly basis, or on a yearly basis?

A. You had a year to qualify for it, if I remember correctly, you had a year to qualify. I do not have anything before me on this, and I have been out of it since 1939, but if I remember correctly, the figures represented the total of your purchases in a year.

Q. If you qualified during the first five months you would have seven additional months in which to get the discount on the purchase?

A. Yes, sir. You knew you would get the discount on the balance of those purchases, that is correct, but you would not indefinitely be assured that you would not suddenly be disqualified.

Q. What I am trying to bring out, Mr. Schauman, is that if you qualified during the first five months of the year, you would have the balance of the year, or seven months, in which to make your purchases and receive the discount?

A. That is right.

Q. I believe you stated that you carried around twelve hundred items in your stock?

3565 A. No, no. I said that the average wholesale grocery carried twelve hundred some odd items but my company did not. My company I think at that time handled on the average of about five hundred items.

Q. About five hundred?

A. Yes. We got it up to that. Since then I suppose it has gone into an additional amount and gotten much larger. You see, I was the pioneer of the thing where we started out to make a tea, coffee, and sugar house into a wholesale grocery house, and really, the company handled wholesale grocery specialties more than anything else.

Q. Then you, from 1935 to 1939, why, your company handled approximately five hundred different items?

A. That is safe to say, different items, different sizes.

Mr. Haslett: I think that is all.

Trial Examiner Purcell: Redirect.

Redirect Examination by Mr. McBride.

Q. Mr. Schauman, in answer one of Mr. Haslett's questions, I believe you stated that you notified the various branch managers or branches of the fact that your purpose was that their proportionate share of the ten cent discount was to be credited to those branches. Is that correct?

A. That is correct. It was on a postal card.

Q. How often did you notify the branches?

3566 A. Every month.

Q. Every month?

A. Yes, sir.

Q. How often was the credit made?

A. The credit was made, it was a bookkeeping matter, and a great many times it might have been delayed, but it was supposed to be every three months, every quarter of a year.

Q. I see.

A. But, you see, we would send a postal card out to each of these branch managers that they would be credited with so much of this or so much of that, and then he would get a recapitulation of the thing on a recapitulation sheet, and so in that way he would get it on two sheets, which would mean that he would get it both monthly and quarterly.

Q. Now, Mr. Schauman, you stated that in connection with the sale of Morton Salt Company's blue package salt, that you had certain special work or advertising, or pushing of the blue package?

A. Yes, sir. We did do a considerable amount of special work, advertising, and pushing of the blue package.

Q. Did the Morton Salt Company require you to do that as a condition of purchase, or as receiving the ten cent discount?

A. No, sir. That was a voluntary proposition.

Q. As far as your company, the C. D. Kenny Company was concerned?

3567 A. Yes, sir.

Q. The only requirement of the Morton Salt Company was that you buy five thousand cases in a five months period; is that correct?

A. That is correct, in a certain period.

Mr. McBride: I have no further questions.

Trial Examiner Purcell: Recross examination.

Mr. Haslett: No questions.

Trial Examiner Purcell: That will be all, Mr. Witness. Thank you.

The Witness: You are quite welcome, sir.

Trial Examiner Purcell: You may be excused.

(Witness excused.)

Mr. McBride: May I call as the next witness on behalf of the Respondent, Mr. Leo Russo.

LEO RUSSO was thereupon called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct Examination by Mr. McBride.

Q. Mr. Russo, will you state your name and address for the record, please?

A. Leo Russo, Baltimore, Maryland.

Q. What is your occupation, Mr. Russo?

3568 A. Buyer and associate director of purchases.

Q. Of what company?

A. Of the C. D. Kenny division of the Sprague-Warner-Kenny Corporation.

Q. That is the present name of your company?

A. Yes, sir.

Q. Is that the successor of the C. D. Kenny Company?

A. That is right.

Q. And in what place are you located, Mr. Russo?

A. Baltimore, at 32 South Street.

Q. Is that the principal office, the principal eastern office, is that it?

A. That is the principal office, the executive offices of the company.

Q. Of the Sprague-Warner-Kenny Corporation?

A. Of the C. D. Kenny Division of the Sprague-Warner-Kenny Corporation.

Q. How long have you held your present position?

A. About a year and a half.

Q. Have you constantly held that position for that period of time?

A. Yes, sir.

Q. You have constantly held the position that you now hold, Mr. Russo, which would mean that you have been employed by them since about the middel of 1941? Is that correct?

3569 A. That is correct, from 1940.

Q. From 1940?

A. Yes.

Q. Will you describe, Mr. Russo, briefly, what your duties are in your present position?

A. Buyer of some merchandise and director of purchases on other merchandise.

Q. Do you have anything to do with the salt purchases of the C. D. Kenny Company?

A. I direct the purchases of salt.

Q. Do you direct the purchases—

A. (Interposing.) I beg your pardon.

Q. I will repeat the question. Will you describe the salt items with respect to which you direct the purchases, Mr. Russo, by name and brand and description of the item?

A. I cannot remember them all, but in the salt items I can remember the Jefferson Island.

Q. Yes?

A. International.

Q. Yes?

A. Morton.

Q. Any others?

A. I cannot remember them all. There may be a few more that I do not recall.

Q. The Morton to which you refer, is that the

3570 round package, free running, and iodized?

A. Yes, sir.

Q. Have you been directing purchases on that item during the entire year and a half of your present duties?

A. That is correct.

Q. Do you ever see any of the invoices, Mr. Russo, for sales of Morton blue package salt to C. D. Kenny Company?

A. Quite often.

Q. What is the invoice price, if you know, of the Morton blue package salt?

A. $1.50.

Q. That has been true since you have been holding your present position?

A. All during that time, yes, sir.

Q. As director of purchases of salt items, Mr. Russo, what jurisdiction do you exercise with respect to the purchases of salt items?

A. I authorize; that is, I authorize any particular brand of salt. I tell them that they may purchase Morton salt, that is my authority, if that is an answer to your question.

Q. When you say that you authorize these purchases, what do you mean by that?

A. To our branches.

Q. Your branch managers?

A. Yes, sir.

3571 Q. So that your jurisdiction extends to a buyer to direct as to, as you say, for purchases as to comparable items both for the branches as well as Baltimore, and includes the various salt items?

A. That is true.

Q. Do you know whether or not, Mr. Russo, C. D. Kenny Company, and its successor corporation, the Sprague-Warner-Kenny Corporation, C. D. Kenny Division, during the year and a half you have been with them, received any discount on blue package Morton salt?

A. Yes, sir. We have received a quantity discount.

Q. How much?

A. Ten cents per case.

Q. That has been true, has it, since you have held your present position?

A. Yes, sir. That is true.

Q. How has that been handled—

A. (Interposing.) I beg your pardon?

Q. In what form do you receive that from the Morton Salt Company?

A. I am not certain of that, whether it is a check or a credit, I am not certain.

Q. Do you know whether or not the check or the credit memorandum, whatever it may be, comes to Baltimore, or does it go to the various branches?

3572 A. It comes to Baltimore, that I do know, it comes to Baltimore.

Q. Baltimore?
A. Yes.
Q. Have you—
A. (Interposing.) I beg your pardon?
Q. I will repeat. As director of purchases, Mr. Russo, with respect to Morton blue package salt, do you exercise any jurisdiction over your various branch managers with respect to the resale prices to be placed on the blue package salt?
A. Yes. We do.
Q. What do you tell them?
A. That they are to sell it at not less than 10 cents—I beg your pardon—not less than ten per cent mark-up on their resale prices.
Q. Have you issued such instructions to the branch managers?
A. They have all been informed as to that fact.
Q. Has that been true since you have been there?
A. Yes.
Q. Has there been any variation from those instructions at any time, so far as you are concerned, during the year and a half of your jurisdiction there?
A. None.
Q. No change?
A. No change.
3573 Q. Will you say that you have instructed them to mark it up at least 10 per cent—10 per cent of what, Mr. Russo?
A. Ten per cent of the invoice cost.
Q. That is, a dollar and a half?
A. That is correct. Ten per cent of one dollar and a half, which would be one dollar and sixty-five cents.
Q. According to your testimony—
A. (Interposing.) I beg your pardon,
Q. I will withdraw that. For the purpose of establishing a ten per cent mark-up, in arriving at a resale price on Morton blue package salt, has there been any variation in your instructions during the year and a half you have been there with respect to using the dollar and a half invoice price as the cost basis?
A. That is not entirely clear to me.
Mr. McBride: May I have the question read.
Trial Examiner Purcell: Read the question.
(The question referred to was read by the reporter.)
The Witness: Cost basis of what?

By Mr. McBride:

Q. Cost basis with respect to ten per cent, Mr. Russo, over one dollar and a half, or what?

A. No, we have just stuck to the dollar and a half cost.

Q. Have you ever authorized any of your branch managers, during the year and a half that you have been
3574 there, Mr. Russo, in that position, to use anything other than the dollar and a half cost basis for any other purpose?

A. Yes.

Q. For what purpose?

A. For the compensation of our salesmen.

Q. Why do you use a different cost basis from a dollar and a half for the compensation of your salesmen? Explain that to us.

A. Well, in our operation, our men are compensated on the percentage of profit, not on the percentage based on sales.

Q. By profit, do you mean gross profit or net profit?

A. Gross profit.

Q. In authorizing the cost for the purpose of these salesmen's commissions other than the dollar and a half, can you state whether or not the authority was given as to a different cost price to these salesmen, and if so, what? In other words, just explain to us what you did in that connection.

A. The branch managers we have authorized—we have authorized the branch managers to use salesmen's cost of $1.40 if they cared to. It was entirely up to them, but that at no time is he to reflect in the resale price that figure. This is a question that has got to be gone into for you to understand, Mr. McBride, why we do that.

Q. Let me ask you this, Mr. Russo, if we assume that in a particular branch the resale price was $1.65 and the
3575 invoice cost was $1.50, and you had authorized that particular branch manager to use $1.40 for commission purposes only, then, how would the commission of the salesman be figured on the Morton blue package salt under those circumstances?

A. In compensating our men, for their gross profit, I mean, for their total sales, if their total sales are 5 per cent, we add to that 20 per cent and he therefore receives 25 per cent of his gross profit.

If his gross profit is 10 per cent, in relation to his

volume of sales, he receives 10 per cent plus the said 20 per cent, making a 30 per cent total gross profit.

In other words, if the salesman makes a larger profit on his merchandise, he receives a larger compensation on the volume of sales.

Q. Then, in my example, if a branch manager were to be given your dollar and forty cent cost on the Morton blue package for the purpose of the percentage to be applied, it would be 25 cents commission on the 15 cents; is that correct?

A. It would be 10 cents more than if it were applied on the difference between a dollar and a half and a dollar and sixty-five. The difference between the dollar and forty cents and a dollar and sixty-five would be twenty-five cents. If that is your point that is correct. I am not certain that I understand your point.

Q. Do you know whether or not—

3576 A. (Interposing.) I beg your pardon—

Q. I will put it this way. In connection with the authority which you have, did you issue any authority authorizing any branch managers to reduce the resale price on Morton blue package?

A. No. At no time.

Q. The discount was for commission purposes only?

A. No, for the compensation of commission salesmen only. Only for the compensation of salesmen.

Q. Do you recall whether or not any such authority was issued except for the—I refer to the matter of the $1.40 for other than commission purposes, was ever issued to the branch manager at Charlotte, North Carolina?

A. I am sorry, sir. I do not understand your question.

Mr. McBride: I will withdraw the question and ask another question.

Trial Examiner Purcell: The question is withdrawn.

By Mr. McBride:

Q. Do you recall whether or not any such authority has been issued for a reduction to $1.40 for commission purposes or was ever issued to the branch at Charlotte, North Carolina?

A. Authority was issued to the branch manager at Charlotte, North Carolina, to use the figure of $1.40 for commission purposes. Such authority as that was issued.

Do I understand your question correctly? I still was not certain.

3577 Q. I believe that is right.

A. Yes.

Q. Do you recall approximately when that was done?

A. No. I would rather not say. It would be a guess.

Q. It has been some time ago?

A. It has been some time ago.

Q. While you were in your present position? Would that be correct?

A. That is correct.

Q. So, that system of paying commissions on Morton's blue package salt to your salesmen, on salt and other commodities, was that instituted after you came into your present position with the C. D. Kenny Company?

A. No. That was in—no, that was in effect when I came there.

Trial Examiner Purcell: Read the question and the answer.

(The question and answer referred to were read by the reporter, as follows:

"Q. So, that system of paying commissions on Morton's blue package salt to your salesmen, on salt and other commodities, was that instituted after you came into your present position with the C. D. Kenny Company?

"A. No. That was in—no, that was in effect when I came there.")

3578 Trial Examiner Purcell: Proceed.

By Mr. McBride:

Q. Were you connected with the C. D. Kenny Company prior to taking over your present duties?

A. Yes, sir.

Q. In what capacity?

A. I was a salesman.

Q. If you know, Mr. Russo, can you state approximately when this commission plan was instituted?

A. It is over two years ago.

Q. As far as your own knowledge goes?

A. As far as I can remember.

Mr. McBride: You may cross-examine.

Trial Examiner Purcell: Cross-examine.

Cross-Examination by Mr. Haslett.

Q. The ten per cent mark-up that you had authorized your various branches to put into effect on Morton blue package or round package salt was the policy of the C. D. Kenny Company prior to the time that you became buyer and director of purchases? Is that not true?

A. That is correct.

Mr. McBride: If the Examiner please, I would like to have that question and answer read.

Mr. Haslett: What is that?

3579 Mr. McBride: I am simply asking to have the question and answer read. I did not hear them.

Trial Examiner Purcell: The reporter will read the question and answer.

(The question and answer were read by the reporter as follows:

"Q. The ten per cent mark-up that you had authorized your various branches to put into effect on Morton blue package or round package salt was the policy of the C. D. Kenny Company prior to the time that you become buyer and director of purchase? Is that not true?

"A. That is correct.")

The Witness: Shall I—

Trial Examiner Purcell: One moment. There can be no objection to that, Mr. McBride.

Mr. McBride: I have not made any. I do not make any objection to it. I just did not hear it.

Trial Examiner Purcell: You may proceed, Mr. Haslett.

By Mr. Haslett:

Q. Mr. Russo, will you tell me whether or not you instructed your various branch managers to sell the round package blue label salt at $1.65 per case?

A. No.

Q. You did not?

3580 A. No.

Q. That instruction had gone out before you became buyer?

A. That is the rule with our organization that we do not care to handle merchandise that does not show a profit of less than—or rather, not less than ten per cent, and that

would be the case here of a dollar and a half, $1.65 figure would be the lowest figure on the basis of not less than 10 per cent. That would be the figure which would automatically fall into place there.

Q. I see.

A. Yes.

Q. Do you know of your own knowledge whether or not the, or any of your various branch managers, since you have been buyer, sold the round package blue label salt at less than $1.65?

A. No, I have no knowledge of it.

Q. You would not say they have not?

A. No. It is possible. I have never learned of it.

Q. What would be the reason for that if they had—if that did happen?

A. From my own opinion of it, it would be that it was done to meet competition.

Q. Does competition play an important part and represent the most important factor in the pricing of the various commodities?

3581 A. I—

Mr. McBride: (Interposing.) If the Examiner please, counsel for the Commission is already beyond the scope of the direct examination, and this witness has never been qualified with respect to the qualification as to competition in the various branches.

Mr. Haslett: I cannot agree with counsel that I am beyond the scope of the direct examination.

Trial Examiner Purcell: No further argument on the record is necessary. The objection is overruled.

Mr. Haslett: Would you like to have the question reread?

The Witness: I would like to have the question reread. Frankly, I have forgotten it.

Trial Examiner Purcell: The reporter will read the question as stated.

(The reporter read the question as follows:

"Q. Does competition play an important part and represent the most important factor in the pricing of the various commodities?")

The Witness: It is a factor. I do not know how to judge whether it would be the most important factor or not.

By Mr. Haslett:

Q. I see. I believe you testified that on some occasions you have authorized the various branch managers to
3582 allow salesmen to sell Morton round package salt for $1.65 predicated on $1.40 cost?

A. Yes, sir.

Q. And the reason for that is to give the salesmen more compensation?

A. That is right, a larger percentage of the gross profit.

Q. Do you know whether or not that practice was put into effect, or was in effect, when you were not receiving any payments in the form of discount from the Morton Salt Company?

A. I—

Mr. McBride: (Interposing.) If the Examiner please, I will have to object to this; the witness has already stated the facts as they existed, and identified the period of time in which he was connected with the company.

The Witness: I would not know that.

Mr. Haslett: I withdraw the question.

Trial Examiner Purcell: The question is withdrawn. You may proceed.

By Mr. Haslett:

Q. Mr. Russo, if your company did not receive the ten cent discount from the Morton Salt Company upon its purchases of blue label salt, would that have any effect upon the basis of computation of the salesmen's profit?

The Witness: Would you read that question again, please? I am not sure I understand it.

3583 Trial Examiner Purcell: Read the question.

(The question referred to was read by the reporter.)

The Witness: That would be determined by the amount of salt that that salesman sold at the lower gross profit, it would be based on the volume of the sales.

By Mr. Haslett:

Q. Tell me how you arrived at the $1.40 price as the basis for the computation of the salesmen's compensation.

A. Well, our cost of $1.40 is arrived at on the $1.50 invoice cost less 10 cents per case quantity discount.

Q. If you do not get the discount on the dollar and a half price cost, then the dollar and a half price would be used?

A. That is right.

Q. Is it desirable from the standpoint of your company to receive the ten cent discount from the Morton Salt Company on your purchases of blue label salt?

A. Yes. It is desirable.

Q. How often are the various branches notified of their credit as to their purchases of Morton round package blue label salt?

A. That is not a set rule. I would say two or three times a year.

Q. I see.

A. Yes.

Q. It is not done on a monthly basis like it used to be done?

3584 A. No, it is not.

Q. It is done on a quarterly basis?

A. Well, we try to keep it on a quarterly basis, but it is not always done that way. It does not always work out that way.

Q. Does any single branch of the C. D. Kenny Company purchase 5,000 cases of Morton's round package blue label salt in any consecutive twelve months period?

A. I do not have the figures, but I would say yes, there would be one or two of our branches that would be buying that amount.

Q. Do you know what branches those would be?

A. Baltimore would be one.

Q. Baltimore would be one?

A. Yes, sir.

Q. And the other one?

A. I do not know offhand.

Q. By the way, how many branches does your company operate?

A. Twenty-eight.

Q. Twenty-eight?

A. Yes.

Q. How many did they operate two years ago?

A. I would not be sure of that. There are a good many of them, but I would not be sure. I cannot be sure.

Q. Would you say twice as many?

3585 A. No. I would say about forty.

Q. About forty branches?

A. Yes, sir.

Q. Did the branch—do you know whether or not the

branch at New Orleans, Louisiana, purchased as much as 5,000 cases of Morton's blue label round package salt in any consecutive twelve months period?

A. I do not know.

Q. You do not know?

A. No. I really do not. I do not have those figures in mind.

Q. You only know that the one branch at Baltimore did?

A. That is my recollection.

Q. Do you know what period that was done in, sir?

A. Well, I am basing that on the figures that have come to my offices most recently, by "most recently," I mean within the last six months. I would say that that was—our Baltimore branch would have bought 5,000 cases within the last twelve months, judging by the record of the figures that I have received for the last six months.

Q. Would you know what other purchases would be for the preceding twelve months, their other purchases?

A. Would you mind stating that question again? I heard what you said but I do not understand you.

Q. Would you know what their other purchases 3586 would be for the preceding twelve months?

A. No. I would not know that.

Q. Does your company purchase any other type of salt from the Morton Salt Company other than the blue can?

A. Yes, sir.

Q. What?

A. We purchase bulk salt, 100 pound bags, and 25 pound bags, and smaller packages, also rock salt, and salt that is used for the curing of meats, and various other types of salt.

Q. Does your company receive any discounts from the Morton Salt Company on those purchases?

A. On those I just mentioned?

Q. Yes.

A. No.

Q. Just on the blue label salt?

A. That is right—

Q. (Interposing.) That is the only salt that your company gets a discount on from the Morton Salt Company?

A. —no, I do not think so, no, we do receive a quantity discount on flat packages of salt.

Q. Table salt?

A. Yes.

Q. Do you know whether or not your company purchased from the Morton Salt Company $50,000 worth of table salt during any twelve months consecutive period?

3587 A. Yes, sir.

Q. Did they?

A. Yes, sir.

Q. They did?

A. Yes, sir.

Q. Did they receive a discount from the Morton Salt Company during those months on those purchases?

A. On the flat 1½ pound flat table salt packages they did.

Q. I am talking about table salt.

A. Yes, sir.

Q. $50,000 worth of table salt per year?

A. Yes, sir.

Q. Does any single branch of the C. D. Kenny Division of the Sprague-Warner-Kenny Corporation purchase fifty thousand dollars' worth of table salt, or did it, during any twelve months consecutive period?

A. I would not be certain of that, but I do not think so.

Mr. Haslett: I believe that is all.

Trial Examiner Purcell: Redirect examination.

Mr. McBride: Just one or two questions.

Trial Examiner Purcell: Proceed.

Redirect Examination by Mr. McBride.

Q. Mr. Russo, you testified that authority to use $1.40 for commissions had been granted with respect to the

3588 Charlotte, North Carolina branch. Is that correct?

A. That is correct.

Q. Have you granted that authority with respect to each and every branch of the C. D. Kenny Division of the Sprague-Warner-Kenny Corporation, or only with respect to certain branches?

A. We have granted that to all branches, if it is necessary for them to use that cost, the lower cost for their salesmen.

Q. It becomes a matter of discretion in each branch manager's mind for his sales force?

A. That is right.

Mr. McBride: I think that is all.

Trial Examiner Purcell: Anything else for this witness?

Mr. Haslett: I have a few more questions.

Recross Examination by Mr. Haslett.

Q. What do you mean, if it becomes necessary for them to use it, sir, would you explain that just a little bit more for us, what you mean by that?

A. Yes, sir.

Q. Please do so.

A. In more competitive markets, the branches located in those markets are forced to sell more items at a lower gross profit, therefore, the salesmen in that particular market, of necessity—it necessitates an added gross
3589 profit on the salt, and therefore, it may be necessary to build up the percentage of profit for that particular salesman in that territory.

Do I make myself clear?

Q. Yes. I think you do. Then, the resale price of the commodity would change in accordance with competition?

A. Well, not necessarily, if it were sold, because if it were sold too cheap we would not handle it in that market.

Trial Examiner Purcell: Read the answer just given by the witness. I will ask the witness to keep his voice up.

(The reporter read the answer as follows:

"A. Well, not necessarily, if it were sold, because if it were sold too cheap we would not handle it in that market.")

Trial Examiner Purcell: Proceed.

By Mr. Haslett:

Q. Is it not true, Mr. Russo, that it is necessary to grant a lower basis, cost basis, in order to give a salesman compensation which would be reflected in the resale prices?

A. No, that is not true.

Mr. McBride: May I hear that question read?

The Witness: The question—

Trial Examiner Purcell: One moment. Mr. McBride has an inquiry.

Read the question.

(The reporter read the question as follows:

3590 "Q. Is it not true, Mr. Russo, that it is necessary

to grant a lower basis, cost basis, in order to give a salesman compensation which would be reflected in the resale prices?")

The Witness: That is not necessary.

Trial Examiner Purcell: One moment.

Do you have an objection to that, Mr. McBride?

Mr. McBride: I thought I had an objection, because I did not hear all of counsel's question, and I am sorry to interrupt the witness. But I do not find that I have an objection. In fact, I find that I do not have an objection, so my apologies to the witness for the interruption.

By Mr. Haslett:

Q. Answer the question.

A. The question?

Q. Have you forgotten the question?

The Witness: Would you read that again, if you want an answer to that, would you care to read it again?

Trial Examiner Purcell: Read the question.

(The reporter read the question as follows:

"Is it not true, Mr. Russo, that it is necessary to grant a lower basis, cost basis, in order to give a salesman compensation which would be reflected in the resale prices?")

The Witness: No, that is not necessary, I think.

3591 By Mr. Haslett:

Q. Is that your full answer?

A. Yes, sir.

Q. Then, will you tell me, Mr. Russo, why it is necessary to have a dollar forty cents basis in which to protect the compensation of salesmen, or at least, upon which to predicate the compensation of salesmen if the resale price is not affected by competition?

A. Because, as I stated before, in various markets, some are more competitive than others, and the branch houses in the competitive territory handle a great deal of merchandise, and they are handling this 10 per cent merchandise, and therefore, in order to make it interesting to the salesmen to sell that item, we try to build up his gross profit.

If we have an additional quantity discount, we automatically turn it over to the salesman to use in his cost for the gross profit on that item, and therefore, build up his total gross profit.

In a territory where there is no keen competition, the dollar and a half cost is all that is necessary because he sells in volume more fifteen per cent merchandise.

I mean by that, merchandise which is fifteen cents over the dollar and a half price, or $1.65.

Do you get my point?

Q. I see, sir.

3592 A. Yes.

Q. Then, Mr. Russo, if that competitor is selling Morton's blue label salt at $1.60, which is 5 cents below the figure you have mentioned, and we are assuming that at the same time you are selling it for $1.65, do you still claim that when your salesman sells a product in the face of that kind of competition, that part of his compensation may be necessary to carry the greater competitive load?

A. No, he may have to meet that competition in those markets, of course.

Q. Is it not a fact that he would have to meet the competition in order to make the sale? Would he not?

A. Yes.

Q. In meeting that competition, his compensation would be diminished?

A. Yes, sir.

Q. Would the additional 10 per cent as given to him; this discount that you mentioned from Morton's Salt be used in order to offset that diminished compensation? Is that correct?

A. No. It is going to him regardless.

If it is a competitive market and the base price in that market is $1.65, he still receives $1.40 cost because in the grocery business there are a lot of items that are sold

3593 at 10 per cent, and some of them are sold for more, and some of them are sold for less than that. In other words, the discounts vary considerably. For instance, Standard tomatoes are an item that are in the 10 per cent class. There are a great many of those.

Q. Mr. Russo, if he has to be reduced,—well, let us put it this way; if he has to reduce his price to $1.60 per case in order to meet this competition, and in order to make sales of Morton's round package blue salt, his compensation is diminished as to the differential between $1.60 and $1.65. Is that not true?

A. That would be true.

Q. And the 10 cents that you give him between the $1.40 and $1.50 has to go to him to take care of the diminished compensation? Is that correct, sir?

A. In those instances?

Q. Yes.

A. I would say yes, sir, if I understand your question.

Mr. Haslett: I think that is all.

Trial Examiner Purcell: Is there anything further for this witness?

Mr. McBride: I have one or two more questions.

Redirect Examination by Mr. McBride.

Q. Mr. Russo, in your system of paying commissions on a gross profit basis, about which you have just
3594 testified, in your opinion, is it to the interest of the salesmen to maintain as high a resale price as possible, or to lower the resale price and get volume?

A. Under our method of compensation, the salesman at all times will endeavor to uphold his high selling price.

Q. Why is that?

A. Because, as I mentioned before, if he sells large volumes in a low bracket, low per centage merchandise, his salary will be less, or his compensation will be less, although the total volume of sales may be high. If you want an example of that, I can give you an example which will give you the point exactly.

Q. I think it is clear now. But your opinion would be —in your opinion, would you think that the same principle would be true with respect to the Morton blue label package as to any other package?

A. That is right, if the percentage of gross profit is not interesting to the salesman, he will not sell it.

Mr. McBride: That is all.

Trial Examiner Purcell: Any further questions of this witness?

Mr. Haslett: Just one or two more questions.

Recross Examination by Mr. Haslett.

Q. And your company makes it interesting by
3595 giving a ten cent discount that they get from the Morton Salt Company to the salesmen?

A. That is determined by the branch manager in that territory.

Q. It has been done?

A. It has been done.

Mr. Haslett: That is all.

Trial Examiner Purcell: Anything else for this witness?

Mr. McBride: Just one more question.

Redirect Examination by Mr. McBride.

Q. You say it gives the discount to the salesmen, or do you mean it is included in the percentage basis?

A. It is reflected in his cost, but not in the selling price.

Mr. McBride: That is all.

Mr. Haslett: That is all.

Trial Examiner Purcell: You may be excused.

(Witness excused.)

35 UNITED STATES OF AMERICA.

BEFORE FEDERAL TRADE COMMISSION.

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C. on the 28th day of July, A. D. 1944.

Commissioners:

Robert E. Freer, Chairman,
Garland S. Ferguson,
Charles H. March,
Ewin L. Davis,
William A. Ayres.

(Caption—4319)

FINDINGS AS TO THE FACTS AND CONCLUSIONS.

Pursuant to the provisions of an Act of Congress entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (Clayton Act), as amended by an Act of Congress approved June 19, 1936 (Robinson-Pat-

man Act), and by virtue of the authority vested in the Federal Trade Commission by the aforesaid Act; the Federal Trade Commission on September 18, 1940, issued and subsequently served its complaint upon the respondent Morton Salt Company, a corporation, charging it with violating the provisions of subsection (a) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before a trial examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the
36 Commission upon said complaint, answer thereto, testimony and other evidence, report of the trial examiner upon the evidence and exceptions filed thereto, briefs filed in support of and in opposition to the complaint, and oral argument of counsel; and the Commission, having duly considered the matter and being now fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

Findings as to the Facts.

Paragraph One: The respondent, Morton Salt Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, having its principal place of business at 310 South Michigan Avenue, Chicago, Illinois. In addition to its main office, said respondent also maintains branch offices and warehouses in various of the larger cities throughout the United States and also maintains plants for processing and manufacturing salt at Port Huron, Michigan; Manistee, Michigan; Hutchinson, Kansas; Kanopolis, Kansas; Grand Saline, Texas; Saltair, Utah; and Newark, California.

Paragraph Two: Since prior to June 19, 1936, respondent has been engaged in the production and manufacture of various kinds and grades of salt and in the sale and distribution of such products in commerce among and between the various states of the United States and in the District of Columbia. Respondent causes its products, when sold,

to be transported from its various plants or warehouses to the purchasers thereof located in states other than the state in which such shipments originate. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce among and between the various states of the United States and in the District of Columbia.

Paragraph Three: In the course and conduct of its business as aforesaid, respondent is now, and during the times herein mentioned has been, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the business of selling and
37 distributing salt in commerce among and between the various states of the United States and in the District of Columbia.

Paragraph Four: The various types of salt processed, manufactured, and sold by the respondent may be divided into four basic classifications: granulated salt, produced from brine and evaporated in vacuum pans; grainer's salt, produced from brine and processed through open-pan evaporation; rock salt, which is mined; and solar salt, which is produced from solar evaporation in open ponds. Table salt may come from all four of these sources.

The principal brand of table salt processed and sold by the respondent is Morton's Free Running Salt, plain and iodized. This brand is the finest grade sold by the respondent and is processed from the granulated or vacuum-pan type of salt. This brand is sold in a round blue package that contains 26 ounces of salt and is generally known as "Blue Label" salt. When sold by the respondent its Blue Label salt is packed twenty-four packages to a case or carton.

Respondent sells its various grades of salt to three classes of customers: (1) wholesalers or jobbers, who in turn resell to the retail trade; (2) retailers who purchase in large quantities, such as cooperative and corporate chain stores; (3) consumers who purchase in large quantities for use in their manufacturing processes, such as meat packers, tanners, and many other industries.

Paragraph Five: In the course and conduct of its business since June 19, 1936, the respondent has been, and is now, discriminating in price between different purchasers buying such products of like grade and quality by selling its products to some of its customers at lower

prices than it sells its products of like grade and quality to other of its customers who are competitively engaged with each other in the sale of such products within the United States.

Paragraph Six: In connection with the sale of its Blue Label plain and iodized salt, respondent followed the
38 practice of allowing various discounts to wholesalers and retail purchasers. Respondent sold its Blue Label salt on a delivered-price basis at $1.60 per case of 24 packages in less-than-carload lots. When sold in carload lots the delivered price was $1.50 per case. In addition, if a customer purchased 5,000 or more cases in any consecutive 12-month period, an additional discount of 10 cents per case was allowed by the respondent. If a customer purchased 50,000 or more cases in any consecutive 12-month period an additional 5-cent discount per case was allowed or a discount of 15 cents per case in lieu of the 5,000-case discount.

These quantity discounts were not deducted from the invoice price but, instead, it was the practice of the respondent to make quarterly, semi-annual, or other stated-period remittances or rebates to those customers whose purchases entitled them to the quantity discounts.

Paragraph Seven: In many instances the respondent both permitted and encouraged customers to purchase on a so-called pool-car arrangement, whereby a number of competing wholesalers or retailers joined in the purchase of a car for delivery at a specific destination. Participants in such pool-car arrangements would call at the destination point and pick up the salt consigned to them and pay cost of delivery from such destination point to their respective warehouses or places of business. Such customers were billed separately by the respondent at the carload price of $1.50 per case.

In some localities respondent sold its Blue Label salt through brokers who arranged for customers to join in pool-car shipments. Respondent paid brokerage commission to such brokers and billed the individual customers, regardless of individual purchases, at the carload price of $1.50 per case. As in the previous case, the customers paid delivery costs from destination point to their respective warehouses or places of business. Respondent also permitted customers to pick up its Blue Label salt in any case quantity desired at certain of its warehouses at the

price of $1.50 per case, customer paying cost of delivery to his warehouse or place of business.

39 Paragraph Eight: In allowing the discount of 10 cents per case on the purchase of 5,000 cases of Blue Label salt, the respondent did not require the purchase of this amount by each individual customer in order to qualify but, instead, permitted combined purchases in order to obtain this discount.

In some instances, the respondent permitted one wholesaler to place orders for Blue Label salt for a number of his competitors. Respondent considered these combined purchases in allowing the quantity discount for 5,000-case purchases and issued its remittances or rebates to such wholesaler for distribution to his competitors. In some instances the wholesaler remitted the entire discount to his competitors and in others retained 2 cents per case and remitted the balance. To those wholesalers who received the entire discount the net price was $1.40 per case and to the others, $1.42 per case. None of such wholesalers individually purchased 5,000 cases of Blue Label salt in any consecutive 12-month period.

The respondent also permitted the Thomas & Howard Companies, a group of separate corporations, all wholesale grocers, located in various cities in North and South Carolina, to combine their purchases to obtain the quantity discount on purchases of 5,000 cases of Blue Label salt. No individual Thomas & Howard Company purchased 5,000 cases of Blue Label salt, but, based upon the combined purchases of all the companies, the respondent remitted the discount of 10 cents per case to the Thomas & Howard Company at Columbus, South Carolina, for distribution to the other companies in proportion to their purchases. In like manner respondent paid the quantity discount on 5,000-case purchases to C. D. Kenny Company for distribution to its various branches, although no individual branch purchased 5,000 cases.

The respondent also permitted the National Retailer-Owned Grocers, Inc., to combine the purchases of its members to obtain the quantity discount on 5,000-case purchases of Blue Label salt. This organization acts as purchasing agent for its membership of approximately 18,917 retail stores located in 42 states of the United States.

These members in turn own about 116 wholesale ware-
40 houses, which act as wholesalers to such members.

No individual wholesale warehouse or retail grocer purchased 5,000 cases of Blue Label salt from respondent, but, based upon combined purchases of all the member stores, the respondent remitted the quantity discount to the principal office of the National Retailer-Owned Grocers, Inc., for distribution to its members.

Paragraph Nine: The allowance of 15 cents per case made to purchasers of 50,000 or more cases of Blue Label salt was limited to four customers whose purchases were sufficient to qualify for this discount. These were American Stores Company of Philadelphia, Pennsylvania; National Tea Company of Chicago, Illinois; Safeway Stores, Inc., of Oakland, California; and Great Atlantic & Pacific Tea Company of New York. These customers were all retail chain stores with branches and stores located in various cities throughout the United States. No branch or retail store purchased a sufficient quantity of respondent's Blue Label salt to qualify for said discount but, instead, the allowance was based upon the combined purchases of all stores and branches. Such discount in many cases permitted such retail chain groceries to sell respondent's Blue Label salt to the consuming public at prices less than wholesalers could reasonably sell said salt to their retail customers. There were other retailers in competition with the above-named retailer customers who purchased Blue Label salt from the respondent and who did not receive the quantity discount on purchases of 50,000 cases but who, instead, purchased said salt from the respondent at the carload price of $1.50 or at the 5,000-case quantity discount.

Paragraph Ten: Salt sold by the respondent, other than the Blue Label salt, was not sold on a delivered-price basis as was the custom with the Blue Label salt. Instead, such salt was sold at list price plus freight or transportation charges from the plant nearest the customer or from the plant serving the area in which the customer was located and from which delivery was customarily made. On such salt other than Blue Label, the respondent also maintains a schedule of discounts known as the "unit discount". One unit amounts to approximately 5 per
41 cent of the list or plant price. One unit, or approximately 5 per cent of list price, is allowed to a customer who purchases in carload lots. This discount is also allowed to customers whose individual purchases are

less than a carload but who combine their purchases to form a carload on the so-called pool-car arrangement.

To those customers who purchase table salt during a 12-consecutive-month period in amounts equal to, or in excess of, $50,000, the respondent allows an additional unit discount amounting to approximately 5 per cent of the list price. While this discount does not apply to respondent's Blue Label salt, the amount of Blue Label salt purchased during the 12-month period is included in arriving at the total purchase of $50,000.

Paragraph Eleven: The Commission finds that the discounts allowed by the respondent in the sale of its Blue Label salt, including price differentials on carload and less-than-carload lots, purchases under so-called pool-car arrangements, and on purchases in 5,000- and 50,000-case quantities, as well as unit discounts allowed on carload lots and $50,000 purchases of salt other than Blue Label, constituted discriminations in price between purchasers of commodities of like grade and quality.

Salt is a staple commodity with a medium turnover and is generally sold by wholesalers to their retail customers on a lower margin of profit than that received on other commodities generally. Consequently, the price at which the wholesaler offers his table salt is usually controlling, and a difference of 5 cents per case may result in the loss of a sale to a customer, not only of the salt involved but of other commodities as well, the order for which might be placed with the salt purchase.

In some instances the discounts allowed by the respondent to some of its wholesaler customers have enabled such wholesalers to offer respondent's table salt to retail dealers at prices equal to prices paid by competing wholesalers or at prices less than competing wholesalers could reasonably sell said salt to the retail customers.

42 The Commission further finds that customers of the respondent who receive the benefit of the various discriminatory prices granted by the respondent have a substantial advantage in selling respondent's salt in competition with other customers of the respondent who do not receive the benefit of said discount or who are obliged to pay respondent's full price for said salt. In order to sell respondent's table salt in competition with customers of the respondent who receive the benefit of respondent's full price or who are denied the discounts allowed such favored

customers must either sell at competitive prices and in so doing reduce their possible profits which they might reasonably obtain by the amount of the discriminations against them, or attempt to sell at higher prices than the favored customers of respondent charge for the same product, with the result of inability to secure business and a reduction in the volume of their sales.

In each instance where the respondent has granted special and regular discounts to its customers, there were competing customers in the same trading area who were purchasing their requirements of Blue Label salt from the respondent at the carload price of $1.50 per case or were paying full less-than-carload price.

By respondent's method of selling and the use of the quantity and special discounts hereinbefore described, customers paying the highest price are discriminated against with respect to all other customers, while the customers paying the lowest price are given the benefit of the discrimination as against other customers of the respondent. Furthermore, the medium-sized wholesale grocer is discriminated against with respect to his larger competitors and is given the benefit of the discrimination as against his smaller competitors.

The discriminations in price based upon purchase of 50,000 or more cases of Blue Label salt allowed to certain of the large retail chain stores constitute a discrimination in price not only against the smaller or medium-sized chain stores that cannot purchase Blue Label salt in such
43 quantities from the respondent, but also constitute a discrimination against the small retail dealer who is in competition with such large chain stores but who is compelled to purchase Blue Label salt through wholesalers at prices in excess of the retail price maintained by such competitive volume purchasers. Respondent, by selling its Blue Label salt to such large retail chain stores at prices below those charged for the same salt when sold to wholesalers, forces retailer customers of such wholesalers to pay prices which prohibit competition in price between such small retailers and the large retail chain stores.

The Commission further finds that the various discounts and discriminatory prices hereinbefore described have been arbitrarily fixed by the respondent and that the effect thereof may be substantially to lessen and injure com-

petition between customers of the respondent. The price differentials so fixed and established by the respondent have not been shown to be justified by reason of differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which its table salt is sold or delivered to its various customers.

Paragraph Twelve: Separate and apart from the discounts hereinbefore described, respondent has made special allowances or discounts to certain customers. For example, the respondent has, for several years, made to the Consolidated Companies, Inc., of Plaquemine, Louisiana, a special allowance of 7½ cents per case from the carload price of $1.50 on its Blue Label salt. Consolidated Companies, Inc., is engaged in the wholesale grocery business and operates 22 units or branches throughout the State of Louisiana in competition with other wholesale grocers in Louisiana who purchase Blue Label salt from the respondent but who do not receive the special discount of 7½ cents per case allowed by the respondent to Consolidated Companies, Inc.

An additional example is the allowance by the respondent of an additional unit discount on table salt other than Blue Label to the Thomas & Howard Companies, although said Thomas & Howard Companies do not purchase $50,000 worth of salt during any consecutive 12-month period to entitle them to the additional unit discount.

44 The respondent refers to these and other special allowances as "competitive adjustments" and contends that they were arrived at to meet competition. Based upon the record in this case the Commission finds that the respondent has not shown the existence of facts which might indicate or prove that these discriminations in price were made in good faith to meet an equally low price of a competitor. The evidence submitted by the respondent is too vague and indefinite to show that the long-continued discriminations herein described were made in good faith to meet an equally low price of a competitor.

Paragraph Thirteen: The Commission finds that the effect of the discriminations in price generally and specifically described herein may be substantially to lessen competition in the line of commerce in which the purchaser receiving the benefit of said discriminatory price is engaged and to injure, destroy, and prevent competition between those purchasers receiving the benefit of said dis-

criminatory prices and those to whom they are denied, and may tend to create a monopoly in those purchasers receiving the benefit of said discriminatory prices in said line of commerce in the various localities or trade areas in the United States in which said favored customers and their competitors are engaged in business.

Conclusion.

The aforesaid discriminations in price by the respondent as herein found constitute violations of subsection (a) of Section 2 of an Act of Congress entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (Clayton Act), as amended by an Act of Congress approved June 19, 1936 (Robinson-Patman Act).

By the Commission.

R. E. Freer,
Chairman.

Dated this 28th day of July, A. D., 1944.

Attest:
Otis B. Johnson,
Secretary.

45 UNITED STATES OF AMERICA.

BEFORE FEDERAL TRADE COMMISSION.

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C. on the 28th day of July, A. D. 1944.

Commissioners:

Robert E. Freer, Chairman,
Garland S. Ferguson,
Charles H. March,
Ewin L. Davis,
William A. Ayres.

• • (Caption—4319) • •

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answer of the respondent, testimony and other evidence in support of the allegations of said complaint and in opposition thereto taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence and exceptions filed thereto, briefs in support of the complaint and in opposition thereto, and oral argument of counsel; and the Commission having made its findings as to the facts and its conclusion that respondent has violated the provisions of subsection (a) of Section 2 of an Act of Congress entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (Clayton Act), as amended by Act approved June 19, 1936 (Robinson-Patman Act):

It Is Ordered that respondent, Morton Salt Company, a corporation, and its officers, representatives, agents, and employees, directly or through any corporate or other device in the sale of Morton's Free Running Table Salt, plain or iodized, or other grades of table salt in com-
46 merce as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from discriminating directly or indirectly in the price of such products of like grade and quality as among wholesale or retail

dealers purchasing said salt when the differences in price are not justified by differences in the cost of manufacture, sale, or delivery resulting from differing methods or quantities in which such products are sold or delivered,

(a) By selling any of such products to some wholesalers thereof at prices different from the prices charged other wholesalers who in fact compete in the sale and distribution of such products.

(b) By selling any of such products to some retailers thereof at prices different from the prices charged other retailers who in fact compete in the sale and distribution of such products.

(c) By selling any of such products to any retailer at prices lower than prices charged wholesalers whose customers compete with such retailer.

For the purposes of comparison, the term "price" as used in this order takes into account discounts, allowances, and other terms and conditions of sale.

It Is Further Ordered that the respondent shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.

By the Commission.

Otis B. Johnson,
Secretary.

(Seal)

47 UNITED STATES OF AMERICA.

FEDERAL TRADE COMMISSION.

I, Otis B. Johnson, Secretary of the Federal Trade Commission, and official custodian of its records, do hereby certify that attached is a full, true, and complete copy of:

Modified findings as to the facts and conclusion and order to cease and desist entered by the Federal Trade Commission April 14, 1945, in Docket 4319, in the matter of Morton Salt Company.

In Witness Whereof, I have hereunto subscribed my name and caused the seal of the Federal Trade Commission to be affixed this 19th day of April, A. D. 1945, at Washington, D. C.

Otis B. Johnson,
Secretary.

(Seal)

48 UNITED STATES OF AMERICA.

BEFORE FEDERAL TRADE COMMISSION.

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 14th day of April, A. D. 1945.

Commissioners:

Ewin L. Davis, Chairman,
Garland S. Ferguson,
Charles H. March,
William A. Ayres,
Robert E. Freer.

(Caption—4319)

MODIFIED FINDINGS AS TO THE FACTS AND CONCLUSION.

Pursuant to the provisions of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (Clayton Act), as amended by an Act of Congress approved June 19, 1936 (Robinson-Patman Act), and by virtue of the authority vested in the Federal Trade Commission by the aforesaid Act, the Federal Trade Commission on September 18, 1940, issued and subsequently served its complaint upon the respondent, Morton Salt Company, a corporation, charging it with violating the provisions of subsection (a) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of, and in opposition to, the allegations of said complaint were introduced before a trial examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission upon said com-
49 plaint, answer thereto, testimony and other evidence, report of the trial examiner upon the evidence and exceptions filed thereto, briefs filed in support of and in op-

position to the complaint, and oral argument of counsel; and the Commission, having considered the matter, made and issued its findings as to the facts and order to cease and desist on July 28, 1944. Thereafter, the respondent filed its petition for review of the order to cease and desist in the United States Circuit Court of Appeals for the Seventh Circuit. Subsequent thereto, by stipulation between the Federal Trade Commission and the respondent by their attorneys, said cause was remanded by the Circuit Court of Appeals to the Federal Trade Commission for the purpose of permitting the Commission to reconsider and modify its findings as to the facts and conclusion and its order to cease and desist issued July 28, 1944; and the Commission, having reconsidered the matter and the record herein, makes this its modified findings as to the facts and its conclusion drawn therefrom:

Modified Findings as to the Facts.

Paragraph One: The respondent, Morton Salt Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, having its principal place of business at 310 South Michigan Avenue, Chicago, Illinois. In addition to its main office, said respondent also maintains branch offices and warehouses in various of the larger cities throughout the United States and also maintains plants for processing and manufacturing salt at Port Huron, Michigan; Manistee, Michigan; Hutchinson, Kansas; Kanopolis, Kansas; Grand Saline, Texas; Saltair, Utah; and Newark, California.

Paragraph Two: Since prior to June 19, 1936, respondent has been engaged in the production and manufacture of various kinds and grades of salt and in the sale and distribution of such products in commerce among and between the various states of the United States and in the District of Columbia. Respondent causes its products, when sold, to be transported from its various plants or warehouses to the purchasers thereof located in states other than the state in which such shipments originate. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce among and between the various states of the United States and in the District of Columbia.

Paragraph Three: In the course and conduct of its busi-

ness as aforesaid, respondent is now, and during the times herein mentioned has been, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the business of selling and distributing salt in commerce among and between the various states of the United States and in the District of Columbia.

Paragraph Four: The various types of salt processed, manufactured, and sold by the respondent may be divided into four basic classifications: granulated salt, produced from brine and evaporated in vacuum pans; grainer's salt, produced from brine and processed through open-pan evaporation; rock salt, which is mined; and solar salt, which is produced from solar evaporation in open ponds. Table salt may come from all four of these sources.

The principal brand of table salt processed and sold by the respondent is Morton's Free Running Salt, plain and iodized. This brand is the finest grade sold by the respondent and is processed from the granulated or vacuum-pan type of salt. This brand is sold in a round blue package that contains 26 ounces of salt and is generally known as "Blue Label" salt. When sold by the respondent its Blue Label salt is packed twenty-four packages to a case or carton.

Respondent sells its various grades of salt to three classes of customers: (1) wholesalers or jobbers, who in turn resell to the retail trade; (2) retailers who purchase in large quantities, such as cooperative and corporate chain stores; and (3) consumers who purchase in large quantities for use in their manufacturing processes, such as meat packers, tanners, and many other industries. Table salt is the only type of salt involved in this proceeding.

Paragraph Five: In the course and conduct of its business since June 19, 1936, in connection with its sale
51 and distribution of its Blue Label plain and iodized salt, the respondent has been, and is now, discriminating in price between different purchasers buying such products of like grade and quality by selling its products to some of its customers at lower prices than it sells its products of like grade and quality to other of its customers who are competitively engaged with the former in the sale of such products within the United States. Among the general practices pursued by the respondent in discriminating in price are the following:

1. Respondent has discriminated in price by selling its Blue Label salt to wholesalers and retailers at a delivered

price of $1.60 per case of 24 packages when delivery was made in less-than-carload lots, while at the same time it sold said Blue Label salt to other wholesalers and retailers at a delivered price of $1.50 per case when delivery was made in carload lots. There were wholesalers and retailers who received the $1.50-per-case price and wholesalers and retailers who received the $1.60-per-case price who were in competition each with the other in the same trade areas.

2. Respondent has also discriminated in price in favor of both wholesalers and retailers who purchased 5,000 or more cases of its Blue Label salt in any consecutive 12-month period by granting a rebate to such purchasers of 10 cents per case from the $1.50-per-case carload price, which rebates were remitted by the respondent to such purchasers in quarterly, semiannual, or other stated periods. Such rebates were referred to, and described by, the respondent as its "5,000-case discount." At the time such rebates were granted, there were other wholesaler or retailer customers of the respondent who were paying the less-than-carload price of $1.60 per case or the carload price of $1.50 per case who were in competition with such rebate or 5,000-case-discount customers in the same trade area.

In granting rebates on the purchase of 5,000 or more cases of its Blue Label salt, respondent permitted certain organizations to combine their purchases in order to qualify for the so-called 5,000-case discount; for example, re-
52 spondent permitted the Thomas & Howard companies, a group of separate corporations, all wholesale grocers, located in various cities in North and South Carolina, to combine their purchases to qualify for said so-called 5,000-case discount on respondent's Blue Label salt. No individual Thomas & Howard Company purchased 5,000 cases of Blue Label salt, but, based upon the combined purchases of all the companies, the respondent remitted a rebate of 10 cents per case to the Thomas & Howard Company at Columbia, South Carolina, for distribution to other Thomas & Howard companies in proportion to their purchases.

In like manner respondent permitted the C. D. Kenny Company to combine the purchases of all its branch stores to qualify for the so-called 5,000-case discount on Blue Label salt. No individual branch store of C. D. Kenny Company purchased 5,000 cases of Blue Label salt, but based upon the combined purchases of all its branch stores the respondent allowed a rebate of 10 cents per case, which it re-

mitted to the C. D. Kenny Company at Baltimore for distribution to its various branches.

The respondent also permitted the National Retailer-Owned Grocers, Inc., to combine the purchases of its members to qualify for the so-called 5,000-case discount on Blue Label salt. This organization acts as purchasing agent for its membership of approximately 18,917 retail stores, located in 42 states of the United States. These members in turn own about 116 wholesale warehouses, which act as wholesalers to such members. No individual wholesale warehouse or retail grocer purchased 5,000 cases of Blue Label salt from respondent, but, based upon combined purchases of all member stores, the respondent allowed a rebate of 10 cents per case, which it remitted to the principal office of the National Retailer-Owned Grocers, Inc., for distribution to its members.

At the time these rebates were granted, there were other wholesalers in competition with Thomas & Howard companies and C. D. Kenny Company in the same trade area, and other retailers in competition with the member stores of the National Retailer-Owned Grocers, Inc., in the same trade areas, who did not receive such rebates.

53 3. Respondent has also discriminated in price in favor of customers who purchased 50,000 or more cases of its Blue Label salt in any consecutive 12-month period by granting a rebate to such purchasers of 15 cents per case from the $1.50-per-case carload price. This rebate was not in addition to the rebate allowed to the purchasers of 5,000-case quantities but was made in lieu thereof. The giving of this rebate by the respondent was limited to four customers, whose purchases were sufficient to qualify for this rebate. These were American Stores Company of Philadelphia, Pennsylvania; National Tea Company of Chicago, Illinois; Safeway Stores, Inc., of Oakland, California; and Great Atlantic & Pacific Tea Company of New York. These customers were all retail chain stores with branches and stores located in various cities throughout the United States. No branch or retail store purchased a sufficient quantity of respondent's Blue Label salt to qualify for said rebate, but, instead, the granting thereof was based upon the combined purchases of all stores and branches. Such rebate in many cases permitted such retail chain groceries to sell respondent's Blue Label salt to the consuming public at prices less than those at which wholesalers could reasonably sell said salt to their retail cus-

tomers. There were other retailers in competition with the above-named retailer customers who purchased Blue Label salt from the respondent and who did not receive such rebate but who, instead, purchased said salt from the respondent at the carload price of $1.50 or at the 5,000-case quantity discount.

Paragraph Six: In the course and conduct of its business since June 19, 1936, in connection with its sale and distribution of table salt other than Blue Label salt, respondent has been, and is now, discriminating in price between different purchasers buying such products of like grade and quality by selling its products to some of its customers at lower prices than it sells its products of like grade and quality to other of its customers who are competitively engaged with the former in the sale of such products within the United States. Salt sold by respondent other than Blue Label salt was not sold on a delivered-price basis, as was the custom with the Blue Label salt. Instead, such salt was sold at list price plus freight or transportation charges
54 from the plant nearest the customer or from the plant serving the area in which the customer was located and from which delivery was customarily made. On the sale of such salt other than Blue Label the respondent also maintains a schedule of discounts known as the "unit discount." One unit amounts to approximately 5 percent of the list or plant price. One unit, or approximately 5 percent of list price, is allowed to a customer who purchases in carload lots. To those customers who purchase table salt during a consecutive 12-month period in amounts equal to, or in excess of, $50,000, the respondent allows a so-called additional unit discount amounting to approximately 5 percent of the list price. While this discount does not apply to respondent's Blue Label salt, the amount of Blue Label salt purchased during a 12-month period is included in arriving at the total purchase of $50,000. There were wholesalers and retailers not receiving such unit discounts who were in competition in the same trade area with wholesalers and retailers who received the unit discount on carload shipments and the additional unit discount based upon total purchases of $50,000.

Paragraph Seven: Separate and apart from the practices hereinabove described, the respondent has also discriminated in price between different purchasers of salt of like grade and quality by means of special allowances or discounts to certain customers. For example, the respondent has, for several years, made to the Consolidated Companies,

Inc., of Plaquemine, Louisiana, a special allowance of 7½ cents per case from the carload price of $1.50 on its Blue Label salt. Consolidated Companies, Inc., is engaged in the wholesale grocery business and operates 22 units or branches throughout the State of Louisiana in competition with other wholesale grocers in Louisiana who purchase Blue Label salt from the respondent but who do not receive the special discount of 7½ cents per case allowed by the respondent to Consolidated Companies, Inc.

An additional example is the allowance by the respondent of an additional unit discount on table salt other than Blue Label to the Thomas & Howard companies, although said Thomas & Howard companies do not purchase $50,000 worth of salt during any consecutive 12-month period to entitle them to the additional unit discount.

55 The respondent refers to these and other special allowances as "competitive adjustments" and contends that they were arrived at to meet competition. Based upon the record in this case the Commission finds that the respondent has not shown the existence of facts which might indicate or prove that these discriminations in prices were made in good faith to meet an equally low price of a competitor. The evidence submitted by the respondent is too vague and indefinite to show that the long-continued discriminations herein described were made in good faith to meet an equally low price of a competitor.

Paragraph Eight: The Commission finds that the price differences allowed by the respondent in the sale of its Blue Label salt, including price differentials on carload and less-than-carload lots and on purchases in 5,000- and 50,000-case quantities, as well as unit discounts allowed on carload lots and $50,000 purchases of salt other than Blue Label, constituted discriminations in price between purchasers of commodities of like grade and quality.

Salt is a staple commodity with a medium turnover and is generally sold by wholesalers to their retail customers on a lower margin of profit than that received on other commodities. Consequently, the price at which the wholesaler offers his table salt is usually controlling, and a difference of five cents per case may result in the loss of a sale to a customer, not only of the salt involved but of other commodities as well, the order for which might be placed with the salt purchase.

In some instances the discounts allowed by the respondent to some of its wholesaler customers have enabled such wholesalers to offer respondent's table salt to retail dealers

at prices equal to prices paid by competing wholesalers or at prices less that competing wholesalers could reasonably sell said salt to the retailer customers.

The Commission further finds that customers of the respondent who receive the benefit of the various discriminatory prices, discounts, rebates, and allowances granted by the respondent have a substantial advantage in selling
56 respondent's salt in competition with other customers of the respondent who do not receive the benefit of such discriminatory prices, discounts, rebates, and allowances or who are obliged to pay respondent's full price for said salt. In order to sell respondent's table salt in competition with customers of the respondent who receive the benefit of respondent's discrimination in price, wholesalers who pay respondent's full price or who are denied the discounts or rebates allowed such favored customers must either sell at competitive prices and in so doing reduce their possible profits by the amount of the discriminations against them, or attempt to sell at higher prices than those which the favored customers of respondent charge for the same product, with the result of inability to secure business and a reduction in the volume of their sales.

By respondent's method of selling and the use of the price differences hereinbefore described, customers paying the highest price are discriminated against with respect to all other customers, while the customers paying the lowest price are given the benefit of the discrimination as against other customers of the respondent. Furthermore, the medium-sized wholesale grocer is discriminated against with respect to his larger competitors and is given the benefit of the discrimination as against his smaller competitors.

The discriminations in price based upon the purchase during any consecutive 12-month period of 50,000 or more cases of Blue Label salt allowed to certain of the large retail chain stores constitute a discrimination in price not only against the smaller or medium-sized chain stores that cannot purchase Blue Label salt in such quantities from the respondent, but also constitute a discrimination against the small retail dealer who is in competition with such large chain stores but who is compelled to purchase Blue Label salt through wholesalers at prices in excess of the retail price maintained by such competitive volume purchases. Respondent, by selling its Blue Label salt to such large retail chain stores at prices below those charged for the same salt when sold to wholesalers, forces retailer customers of such wholesalers to pay prices which prohibit competition

in price between such small retailers and the large retail chain stores.

Paragraph Nine: The respondent, during the course of the hearings, offered some testimony and evidence in an attempt to justify its price differentials to various customers. The trial examiner sustained a motion to strike this testimony as being based upon estimates, hypotheses, and mere guesses and as arbitrarily including items of distribution the correctness or applicability of which was doubtful. The Commission has nevertheless considered the testimony so stricken, as well as other matters in the record, and is of the opinion, and so finds, that respondent's price differences, including the rebates, allowances, and discounts hereinabove mentioned, have not been shown to be justified by reason of differences in the cost of manufacture, sale, or delivery resulting from differing methods or quantities in which respondent's table salt is sold or delivered to its various customers.

Paragraph Ten: The Commission finds that the effect of the discriminations in price, including discounts, rebates, and allowances, generally and specifically described herein may be substantially to lessen competition in the line of commerce in which the purchaser receiving the benefit of said discriminatory price is engaged and to injure, destroy, and prevent competition between those purchasers receiving the benefit of said discriminatory prices, discounts, rebates, and allowances and those to whom they are denied.

Conclusion.

The aforesaid discriminations in price by the respondent as herein found constitute violations of subsection (a) of Section 2 of an Act of Congress entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (Clayton Act), as amended by an Act of Congress approved June 19, 1936 (Robinson-Patman Act).

By the Commission.

Charles H. March,
Acting Chairman.

(Seal)

Dated this 14th day of April, A. D. 1945.

Attest:
Otis B. Johnson,
Secretary.

58 UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION.

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 14th day of April, A. D. 1945.

Commissioners:

Erwin L. Davis, Chairman,
Garland S. Ferguson,
Charles H. March,
William A. Ayres,
Robert E. Freer.

(Caption—4319)

MODIFIED ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answer of the repondent, testimony and other evidence in support of the allegations of said complaint and in opposition thereto taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence and exceptions filed thereto, briefs in support of the complaint and in opposition thereto, and oral argument of counsel; and the Commission, having considered the matter, made and issued its findings as to the facts, conclusion, and order to cease and desist on July 28, 1944. Thereafter, said cause was remanded by the Circuit Court of Appeals for the further consideration of the Commission, and the Commission, having reconsidered the matter and the record herein, made and issued its modified findings as to the facts and its conclusion that respondent has violated the provisions of subsection (a) of Section 2 of an Act of Congress entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (Clayton Act), as amended by Act approved June 19, 1936 (Robinson-Patman Act):

It Is Ordered that respondent, Morton Salt Company, a corporation, and its officers, representatives, agents, and employees, directly or through any corporate or other device in the sale of Morton's Free Running Table Salt, plain or iodized, or other grades of table salt in commerce as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from discriminating directly or indirectly in the price of such products of like grade and quality as among wholesale or retail dealers purchasing said salt when the differences in price are not justified by differences in the cost of manufacture, sale, or delivery resulting from differing methods or quantities in which such products are sold or delivered,

(a) By selling such products to some wholesalers thereof at prices different from the prices charged other wholesalers who in fact compete in the sale and distribution of such products; provided, however, that this shall not prevent price differences of less than five cents per case which do not tend to lessen, injure, or destroy competition among such wholesalers.

(b) By selling such products to some retailers thereof at prices different from the prices charged other retailers who in fact compete in the sale and distribution of such products; provided, however, that this shall not prevent price differences of less than five cents per case which do not tend to lessen, injure, or destroy competition among such retailers.

(c) By selling such products to any retailer at prices lower than prices charged wholesalers whose customers compete with such retailer.

For the purposes of comparison, the term "price" as used in this order takes into account discounts, rebates, allowances, and other terms and conditions of sale.

It Is Further Ordered that the respondent shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

By the Commission.

Otis B. Johnson,
Secretary.

Endorsed: Certified Copy Modified Findings and Cease and Desist Order. Filed April 23, 1945 Kenneth J. Carrick, Clerk.

62 IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

October Term, 1944

October Session, 1944

Morton Salt Company, a corporation,
Petitioner,
vs.
Federal Trade Commission,
Respondent.
} No. 8703

PETITION FOR REVIEW OF AN ORDER OF THE FEDERAL TRADE COMMISSION.

To the Honorable Judges of the United States Circuit Court of Appeals for the Seventh Circuit:

Now Comes the Morton Salt Company, an Illinois corporation having its principal office and place of business at Chicago, Illinois, and petitions this Court for a review of an Order of the Federal Trade Commission heretofore entered, and respectfully represents to this Court as follows:

1. The proceedings as to which this review is sought were instituted against this Petitioner by a Complaint of the Federal Trade Commission (hereinafter referred to as the "Commission") issued September 18, 1940, pursuant to the provisions of an Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes" (the Clayton Act), as amended by an Act approved June 19, 1936, entitled "An Act to amend Section 2 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes' approved October
63 15, 1914, as amended (U. S. C. Title [illegible], Sec. 13), and for other purposes" (the Robinson-Patman Act). Such proceedings before the Commission were entitled "In the Matter of the Morton Salt Company", Docket No. 4319. An Order was issued by the Commission in such proceed-

ings on July 28, 1944, and thereafter served on the Petitioner, ordering it to cease and desist from certain acts and practices.

2. This Petition for Review is filed under and by virtue of the Clayton Act as amended by the Robinson-Patman Act (Act of October 15, 1914, Chap. 323, 38 Stat. 730 (Clayton Act), as amended; 15 U. S. Code, Secs. 12-27, 18 U. S. Code, Sec. 412, 28 U. S. Code, Secs. 381-383, 386-390, 29 U. S. Code, Sec. 52, as amended (Robinson-Patman Act); Act of June 19, 1936, Chap. 592, 49 Stats. 1526; 15 U. S. Code, Secs. 13-13b, 21a).

3. Acts and practices of the Petitioner complained of in said Complaint and included within the scope of said cease and desist Order occurred within the jurisdiction of the United States Circuit Court of Appeals for the Seventh Circuit, and the principal office and place of business of the Petitioner is within the jurisdiction of the United States Circuit Court of Appeals for the Seventh Circuit.

4. The said Complaint charges, in substance, that the Petitioner has been discriminating in price between different purchasers buying products of like grade and quality, by selling its products to some of its customers at lower prices than it sells its products of like grade and quality to other of its customers, who are competitively engaged one with the other in the sale of said products within the United States. The said Complaint further charges that said discriminations in price were brought about
64 by the granting of discounts, which are specifically enumerated and described in paragraph four of said Complaint. The said Complaint further charges that the effect of the alleged discriminations in price has been and may be substantially to lessen competition in the line of commerce in which the purchasers receiving the benefit of the alleged discriminatory prices is engaged and to injure, destroy and prevent competition between those purchasers receiving the benefit of said discriminatory prices and those to whom they are denied, and has been and may be to tend to create a monopoly in those purchasers receiving the benefit of said discriminatory prices in said line of commerce in the various localities or trade areas in the United States in which said favored customers and their competitors are engaged in business.

5. The Petitioner filed an Answer admitting that cer-

tain discounts were granted, as specifically enumerated and described in paragraph four of said Answer, but denying that the effect of said discounts has been or may be substantially to lessen competition, or to injure, destroy or prevent competition, or to create a monopoly, as alleged in said Complaint. The Answer further alleges that the said discounts made only due allowance for differences in the cost of manufacture, sale and delivery resulting from the different methods and quantities in which the commodities of the Petitioner were sold and delivered to the purchasers thereof, and that the lower prices resulting from said discounts were made in good faith to meet equally low prices of competitors of the Petitioner and the services and facilities furnished by competitors.

6. Hearings were held in the course of which tes-
65 timony was taken and exhibits were introduced in evidence on behalf of both the Commission and the Petitioner. Thereafter, counsel for both the Commission and the Petitioner filed statements with the Trial Examiner setting forth the facts which each counsel contended had been proved. The Trial Examiner then filed with the Commission his Report on the Evidence, to which Exceptions were filed on behalf of the Petitioner. Briefs were filed with the Commission on behalf of both the Commission and the Petitioner, and the matter was argued orally before the Commission.

7. On July 28, 1944, the Commission entered an Order, a copy of which is attached hereto as Exhibit "A" and hereby made a part hereof. No Report of Compliance has been filed by the Petitioner with respect to said Order.

8. The said Order of the Commission contains Findings of Fact against the Petitioner which are not supported by any evidence. The Order exceeds the jurisdiction of the Commission, it requires the Petitioner to cease and desist from acts and practices which are not contrary to law, it is not supported by the evidence, and it is unreasonable, illegal and oppressive.

9. A Statement of Points relied upon by the Petitioner is filed simultaneously herewith and made a part hereof by reference thereto.

Wherefore, the Petitioner prays that this Court exercise its jurisdiction over the parties and subject matter of this Petition for Review; that it require the Commission

to certify for filing in this Court a transcript of the entire record in the aforementioned proceedings before it, including the following: Complaint, Answer, all testimony taken, all exhibits introduced in evidence, and the Findings of Fact and Order of the Commission; that it
66 review the proceedings and the Commission's Order of July 28, 1944; and that it enter an order setting aside said Findings of Fact and Order of the Commission and directing the Commission to dismiss its Complaint against the Petitioner.

Morton Salt Company,
By Daniel Peterkin, Jr.,
Its President.

State of Illinois }
County of Cook } ss.

Daniel Peterkin, Jr., being first duly sworn, on oath deposes and says that he is the President of the Morton Salt Company, the Petitioner in the above entitled matter; that he has read the above and foregoing Petition for Review by him subscribed; that he has knowledge of the facts therein set forth; and that the same are true to the best of his knowledge, information and belief.

Daniel Peterkin, Jr.,

Subscribed and sworn to before me this 25th day of October, 1944.

Gladys C. Ragsdale,
Notary Public.

(Seal)

L. M. McBride,
Edward H. Baker, Jr.,
310 South Michigan Avenue
Chicago 4, Illinois.
Attorneys for Petitioner.

68 In the United States Circuit Court of Appeals.

(Caption 8703)

Petition for Review of an Order of the Federal Trade Commission. Filed October 25, 1944 Kenneth J. Carrick, Clerk.

69 IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

* * (Caption—8703) * *

STATEMENT OF POINTS.

The Federal Trade Commission (hereinafter referred to as the "Commission") erred in its Findings as to the Facts and in its Order entered herein against the Petitioner on July 28, 1944, and the Petitioner makes the following Statement of Points with respect thereto:

1. The Commission erred in all or some portion of its Findings of Facts appearing in each of the following paragraphs of its Findings of Facts: Paragraphs Five, Six, Seven, Eight, Nine, Ten, Eleven, Twelve and Thirteen, in that:

(a) Said Findings of Facts are not based on any evidence before the Commission and are nothing other than conclusions of the Commission, wholly unwarranted by any evidence before the Commission.

(b) Said Findings of Facts are in contradiction of the evidence before the Commission.

(c) Said Findings of Facts entirely omit any consideration of or findings based upon that portion of the evidence before the Commission which proved and substantiated all the material allegations and contentions of the Petitioner.

70 2. The Commission erred in that its Order is not based upon the Complaint, for the following reasons:

(a) The Complaint charges discrimination in prices predicated upon certain specifically described discounts, whereas the Order directs the Petitioner to cease and desist from discrimination by charging some customers "prices different from the prices" charged others, with no reference being made in said Order to the specifically described discounts. Any Order entered by the Commission must, in any event, be confined to those specifically described discounts.

(b) The Complaint alleges that the effect of the granting of said discounts "has been and may be substantially to lessen competition", whereas the Commission in its Findings of Facts only found that the effect of granting said discounts "may be substantially to lessen competi-

tion", and the Order entered by the Commission was based on the Findings of Facts and not upon the allegations of the Complaint which the Commission failed to prove.

3. The Commission erred in that its Order is not supported by the evidence, for the following reasons:

(a) Said Order is not based on any evidence before the Commission, but is based entirely upon conclusions of the Commission, wholly unwarranted by any evidence before the Commission.

(b) Said Order is based on Findings of Facts which are in contradiction of the evidence before the Commission.

(c) Said Order is based upon Findings of Facts which entirely omit any consideration of or Findings based upon that portion of the evidence before the Commission which proved and substantiated all the material allegations and contentions of the Petitioner.

(d) Said Order directs the Petitioner to cease and desist from discrimination by charging some customers "prices different from the prices" charged others, whereas the evidence before the Commission consisted only of evidence with respect to the specifically described discounts set forth in the Complaint of the Commission and, 71 with certain modifications, in the Answer of the Petitioner.

(e) Said Order purports to cover the "sale of Morton's Free Running Table Salt, plain or iodized, or other grades of table salt", whereas the evidence before the Commission covered only certain specified discounts granted with respect to certain sizes, packs, grades, types and brands of table salt, and there was no evidence before the Commission with respect to any discounts being granted insofar as other sizes, packs, grades, types and brands of table salt, or what might be deemed to be table salt, are concerned.

4. The Commission erred in that its Order exceeds the jurisdiction of the Commission, for the following reasons:

(a) The Commission has no jurisdiction under the Robinson-Patman Act to enter an Order unless it proves that the effect of discriminations "may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them". The Order of the Commission is not in any way qualified by the provisions of the Robinson-Patman Act quoted in the preceding sentence.

(b) The Commission is without jurisdiction to enter an Order at all unless it has proved that the effect of discrimination may be as quoted in paragraph 4 (a) hereof, and there is no evidence before the Commission which proves or tends to prove injury to competition such as is described in paragraph 4 (a) hereof.

5. The action of the Commission in entering its Order deprived the Petitioner of its constitutional guarantee of due process of law as secured by the Fifth Amendment to the Constitution of the United States, for the following reasons:

(a) Said Order exceeded the jurisdiction of the Commission, it was not based upon the Complaint and it was not supported by the evidence before the Commission.

72 (b) Said Order is so vague that it does not apprise and inform the Petitioner of what actions shall constitute enforcible violations of said Order, and permits the Commission to initiate and prosecute enforcement proceedings, summary or otherwise, with respect to actions not violative of the Robinson-Patman Act or of any other Act or Law, but which might be deemed to be violative of the Order of the Commission.

L. M. McBride,
Edward H. Baker, Jr.,
Attorneys for the Petitioner.

73 Endorsed: In the United States Circuit Court of Appeals. • • (Caption 8703) • • Statement of Points. U. S. C. C. A.—7. Filed Oct. 25, 1944. Kenneth J. Carrick, Clerk.

74 IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

October Term, 1944.

October Session, 1944.

Morton Salt Company, a corporation,
Petitioner,
vs.
Federal Trade Commission,
Respondent.
No. 8703.

AMENDED PETITION FOR REVIEW OF THE MODIFIED ORDER OF THE FEDERAL TRADE COMMISSION.

To the Honorable Judges of the United States Circuit Court of Appeals for the Seventh Circuit:

Now Comes The Morton Salt Company, an Illinois corporation having its principal office and place of business at Chicago, Illinois, and files with this Court its Amended Petition for Review of the Modified Order of the Federal Trade Commission heretofore entered in the above proceedings, and respectfully represents to this Court as follows:

1. During the October Session of the October Term, 1944, Petitioner filed with this Court its Petition for Review of an Order of the Federal Trade Commission, entered July 28, 1944, its Statement of Points in support of said Petition for Review and its Designation of Contents of the Printed Record required in connection with said Review. On February 3, 1945, this Court approved a Stipulation proffered by Respondent and signed by both parties, which Stipulation provided, in substance, that
75 the Respondent's Order of July 28, 1944 should be remanded for modification. Paragraph 4 of said Stipulation provides as follows:

"4. Nothing herein is intended, or shall be taken, to preclude petitioner from obtaining a review of such modified Findings as to the Facts and Conclusion and such

modified Order to Cease and Desist as the Federal Trade Commission may issue, and within sixty days from the date on which the Federal Trade Commission files herein its modified Findings as to the Facts and Conclusion and its modified Order to Cease and Desist, petitioner may file an amended petition to review and an amended statement of points."

Modified Findings as to the Facts and Conclusions and a Modified Order to Cease and Desist were entered by the Respondent in these proceedings on April 14, 1945, and filed with this Court on April 23, 1945, a certified copy of which is attached hereto and hereby made a part hereof. This Amended Petition for Review is filed pursuant to said Paragraph 4 of said Stipulation.

2. Paragraphs 1 to 7, both inclusive, of the Petition for Review of the Order of July 28, 1944, are incorporated by reference in this Amended Petition for Review and are hereby made a part hereof.

3. The said Modified Order of the Commission contains Modified Findings of Facts against the Petitioner which are not supported by any evidence. The Modified Order exceeds the jurisdiction of the Commission, it requires the Petitioner to cease and desist from acts and practices which are not contrary to law, it is not supported by the evidence, and it is unreasonable, illegal and oppressive.

4. An Amended Statement of Points relied upon by
76 the Petitioner is filed simultaneously herewith and made a part hereof by reference thereto.

Wherefore, the Petitioner prays that this Court exercise its jurisdiction over the parties and subject matter of this Amended Petition for Review; that in addition to the items specified in the prayer of the original Petition for Review, the Court require the Commission to certify for filing in this Court the Modified Findings of Facts and Order of the Commission entered April 14, 1945; that it review the proceedings and the Commission's Modified Order of April 14, 1945; and that it enter an order setting aside said Modified Findings of Facts and Order of the Commission and directing the Commission to dismiss its Complaint against Petitioner.

Morton Salt Company,
By: J. A. Clements,
Its Executive Vice-President.

State of Illinois }
County of Cook } ss.

J. A. Clements, being first duly sworn, on oath deposes and says that he is the Executive Vice-President of the Morton Salt Company, the Petitioner in the above entitled matter; that he has read the above and foregoing Amended Petition for Review by him subscribed; that he has knowledge of the facts therein set forth; and that the same are true to the best of his knowledge, information and belief.

J. A. Clements.

Subscribed and sworn to before me this 14th day of June, 1945.

Gladys C. Ragsdale,
Notary Public.

(Seal)

L. M. McBride,
Edward H. Baker, Jr.,
310 South Michigan Avenue,
Chicago 4, Illinois,
Attorneys for Petitioner.

78 Endorsed: In the United States Circuit Court of Appeals. * * * (Caption—8703) * * Amended Petition for Review of the Modified Order of the Federal Trade Commission. U. S. C. C. A.—7. Filed June 14, 1945. Kenneth J. Carrick, Clerk.

79 IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

* * * (Caption—8703) * *

AMENDED STATEMENT OF POINTS.

The Federal Trade Commission (hereinafter referred to as the "Commission") erred in its Modified Findings as to the Facts and in its Modified Order entered herein against the Petitioner on April 14, 1945, and the Petitioner makes the following Amended Statement of Points with respect thereto:

1. The Commission erred in all or some portion of its Modified Findings of Facts appearing in each of the following paragraphs of its Modified Findings of Facts:

Paragraphs Five, Six, Seven, Eight, Nine and Ten, in that:

(a) Said Modified Findings of Facts are not based on any evidence before the Commission and are nothing other than conclusions of the Commission, wholly unwarranted by any evidence before the Commission.

(b) Said Modified Findings of Facts are in contradiction of the evidence before the Commission.

(c) Said Modified Findings of Facts entirely omit any consideration of or findings based upon that portion of the evidence before the Commission which proved and substantiated all the material allegations and contentions of the Petitioner.

80 (d) Said Modified Findings of Facts are largely predicated upon answers to so-called hypothetical questions, which questions in turn were not based on the evidence and were, therefore, improperly permitted over objection.

2. The Commission erred in that its Modified Order is not based upon the Complaint, for the following reasons:

(a) The Complaint charges discrimination in prices predicated upon certain specifically described discounts, whereas the Modified Order directs the Petitioner to cease and desist from discrimination by charging some customers "prices different from the prices" charged others, with no reference being made in said Modified Order to the specifically described discounts. Any order entered by the Commission must, in any event, be confined to those specifically described discounts.

(b) The Complaint alleges that the effect of the alleged price discriminations "has been and may be substantially to lessen competition", whereas the Commission in its Modified Findings of Facts only found that the effect of the alleged price discriminations "may be substantially to lessen competition", so that the Modified Order entered by the Commission was based on the Modified Findings of Facts and not upon the allegations of the Complaint, which the Commission failed to prove.

3. The Commission erred in that its Modified Order is not supported by the evidence, for the following reasons:

(a) Said Modified Order is not based on any evidence before the Commission, but is based entirely upon conclusions of the Commission, wholly unwarranted by any evidence before the Commission.

(b) Said Modified Order is based on Modified Findings of Facts which are in contradiction of the evidence before the Commission.

(c) Said Modified Order is based upon Modified Findings of Facts which entirely omit any consideration
81 of or findings based upon that portion of the evidence before the Commission which proved and substantiated all the material allegations and contentions of the Petitioner.

(d) Said Modified Order is largely predicated on answers to so-called hypothetical questions, which questions in turn were not based on the evidence and were, therefore, improperly permitted over objection.

(e) Said Modified Order directs the Petitioner to cease and desist from discrimination by charging some customers "prices different from the prices" charged others, whereas the evidence before the Commission consisted only of evidence with respect to the specifically described discounts set forth in the Complaint of the Commission and, with certain modifications, in the Answer of the Petitioner.

(f) Said Modified Order purports to cover the "sale of Morton's Free Running Table Salt, plain or iodized, or other grades of table salt", whereas the evidence before the Commission covered only certain specified discounts granted with respect to certain sizes, packs, grades, types and brands of table salt, and there was no evidence before the Commission with respect to any discounts being granted insofar as other sizes, packs, grades, types and brands of table salt, or what might be deemed to be table salt, are concerned.

4. The Commission erred in that its Modified Order exceeds the jurisdiction of the Commission, for the following reasons:

(a) The Commission has no jurisdiction under the Robinson-Patman Act to enter an order unless it proves that the effect of discriminations "may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them". The Modified Order of the Commission is not properly qualified by the provisions of
82 the Robinson-Patman Act quoted in the preceding sentence.

(b) The Commission is without jurisdiction to enter an order at all unless it has proved that the effect of discrimination may be as quoted in paragraph 4 (a) hereof, and there is no evidence before the Commission which proves or tends to prove injury to competition such as is described in paragraph 4 (a) hereof.

5. The action of the Commission in entering its Modified Order deprived the Petitioner of its constitutional guarantee of due process of law as secured by the Fifth Amendment to the Constitution of the United States, for the following reasons:

(a) Said Modified Order exceeded the jurisdiction of the Commission, it was not based upon the Complaint and it was not supported by the evidence before the Commission.

(b) Said Modified Order is so vague that it does not apprise and inform the Petitioner of what actions shall constitute enforcible violations of said Modified Order, and permits the Commission to initiate and prosecute enforcement proceedings, summary or otherwise, with respect to actions not violative of the Robinson-Patman Act or of any other Act or Law, but which might be deemed to be violative of the Modified Order of the Commission.

L. M. McBride,
Edward H. Baker, Jr.,
Attorneys for the Petitioner.

83 Endorsed: In the United States Circuit Court of Appeals. • • (Caption—8703) • • Amended Statement of Points. U. S. C. C. A.—7. Filed June 14, 1945. Kenneth J. Carrick, Clerk.

84 IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

• • (Caption—8703) • •

DESIGNATION OF CONTENTS OF PRINTED RECORD.

The Petitioner in the above entitled cause, pursuant to the Rules of the United States Circuit Court of Appeals for the Seventh Circuit, hereby designates the following portions of the transcript to be included in the printed record:

1. Complaint of Respondent.
2. Answer of Petitioner.
3. The entire record of transcript of all hearings before the Trial Examiner, including all testimony taken on behalf of the Petitioner and on behalf of the Respondent, and including all motions, objections and exceptions made in the course of said hearings and the rulings thereon. All statements, remarks and instructions made or given by the Trial Examiner at any hearing, with respect to the general conduct of the hearing, including all opening and closing statements of the Trial Examiner shall be excluded.
4. Order of the Respondent, issued July 28, 1944, together with Respondent's Findings of Fact issued in
85 connection with said order.
5. Respondent's Exhibits Nos. 1, 2a to 2q, inclusive, 3a to 3i, inclusive, 4a to 4k, inclusive, 5a to 5f, inclusive, 6a, 6b, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16a, 16b, 17, 18, 19, 20, 21, 22, 23, 34a, 34b, 35, 36, 37, 38, 39, 52, 53, 54a to 54d, inclusive, 55a to 55f, inclusive, 56a to 56c, inclusive, 58, 59a, 59b, 59c, 60a, 60b, 61a to 61d, inclusive, 62a to 62f, inclusive, 65, 66, 69, 70, 71, 72, 73, 74a, 74b, 75, 76a, 76b, 76c, 77, 78, 79, 80, 81a, 81b, 82a, 82b, 83, 84, 85, 86, 87, 88a, 89a, to 89k, inclusive, 90a, 91, 92a, 93, 96b, 98a, 99a, 100, 101a, 105, 107a, 108a, 109, 111, 113b, 114b, 116a, 119, 120a, 121a, 124, 128, 129, 130, 131, 132a, 137a, 138a, 141, 142a, 143a, 144, 145, 146, 147, 148, 150, 151, 152, 153, 155, 156, 158a, 159a, 160a, 161a, 164a, 180, 184, 185, 187, 188, 189, 191, 192, 193, 194 and 195. Petitioner's Exhibits Nos. 7a, 7b, 8a, 8b, 9a, 9b, 9c, 9d, 9e, 10a to 10e, inclusive, 11a, 11b, 12a, 12b, 12c, 13a to 13e, inclusive, 14a to 14d, inclusive, 15a, 15b, 16 and 17.

L. M. McBride.

State of Illinois, } ss.
County of Cook. }

Gladys C. Ragsdale, being first duly sworn, on oath deposes and says that she served a copy of the above and foregoing Designation of Contents of Printed Record upon the Respondent, Federal Trade Commission, by mailing a copy thereof to the said Federal Trade Commission, in care of Otis B. Johnson, Secretary thereof, Washington 25, D. C. by registered mail, in an envelope, affixing the proper postage thereto, which was deposited this 13th day of January, 1945, in the United States Postoffice, Chicago, Illinois.

Gladys C. Ragsdale.

Subscribed and sworn to before me this 13th day of January, 1945.

Helen Roberts,
(Seal) *Notary Public.*

86 Endorsed: In the United States Circuit Court of Appeals • • (Caption—8703) • • Designation of Contents of Printed Record. Filed Jan. 13, 1945, Kenneth J. Carrick, Clerk.

87 IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

• • (Caption—8703) • •

AMENDED DESIGNATION OF CONTENTS OF PRINTED RECORD.

The Petitioner in the above entitled cause, pursuant to the Rules of the United States Circuit Court of Appeals for the Seventh Circuit, hereby designates the following portions of the transcript to be included in the printed record:

1. All portions of the transcript specified in paragraphs 1 to 4, both inclusive, of the original Designation of Contents of Printed Record heretofore filed herein.

2. Modified Order of the Respondent, issued April 14, 1945, together with Respondent's Modified Finding of Facts, issued in connection with said Modified Order.

3. Reference to the Exhibits specified in paragraph 5 of the original Designation of Contents of Printed Record shall be to the physical exhibits, in accordance with the Order of this Court entered herein on January 23, 1945.

L. M. McBride.

State of Illinois, } ss.
County of Cook. }

Lois Ulk, being first duly sworn, on oath deposes and
87½ says that she served a copy of the above and foregoing Amended Designation of Contents of Printed Record upon the Respondent, Federal Trade Commission, by mailing a copy thereof to the said Federal Trade Commission, in care of Otis B. Johnson, Secretary thereof, Washington 25, D. C. by registered mail, in an envelope, affixing the proper postage thereto, which was deposited this 14th day of June, 1945, in the United States Postoffice, Chicago, Illinois.

Lois Vlk.

Subscribed and sworn to before me this 14th day of June, 1945.

Gladys C. Ragsdale,
Notary Public.

(Seal)

88 Endorsed: In the United States Circuit Court of Appeals. • • • (Caption—8703) • • Amended Designation of Contents of Printed Record. Filed June 14, 1945, Kenneth J. Carrick, Clerk.

89 In the United States Circuit Court of Appeals.

• • (Caption—8703) • •

AMENDED DESIGNATION OF CONTENTS OF PRINTED RECORD.

The Petitioner in the above entitled cause, pursuant to the Rules of the United States Circuit Court of Appeals for the Seventh Circuit, hereby designate the following portions of the transcript to be included in the printed record:

1. Stipulation, as approved by the Circuit Court of Appeals, Seventh Circuit, on February 3, 1945, regarding the remanding to the Federal Trade Commission of the Findings of Fact and Order of the Federal Trade Commission issued July 28, 1944.

L. M. McBride.

State of Illinois, } ss.
County of Cook. }

Lois J. Vlk, being first duly sworn, on oath deposes and says that she served a copy of the above and foregoing Amended Designation of Contents of Printed Record upon the Respondent, Federal Trade Commission, by mailing a copy thereof to the said Federal Trade Commission, in care of Otis B. Johnson, Secretary thereof, Washington 25, D. C. in an envelope, affixing the proper postage thereto, which was deposited this 28th day of June, 1945, in a United States Postoffice Box at 310 South Michigan Avenue, Chicago 4, Illinois.

Lois J. Vlk.

Subscribed and sworn to before me this 28th day of June, 1945.

Gladys C. Ragsdale,
Notary Public.

(Seal)

90 Endorsed: In the United States Circuit Court of Appeals. * * (Caption—8703) * * Amended Designation of Contents of Printed Record. Filed June 29, 1945, Kenneth J. Carrick, Clerk.

91 And afterwards, to wit, on the 23rd day of January, 1945, the following further proceedings were had and entered of record, to wit:

Before:

Hon. William M. Sparks.

* * (Caption—8703) * *

It is ordered that the petition of counsel for petitioner as to not printing exhibits be, and it is hereby, granted.

92 UNITED STATES CIRCUIT OF APPEALS,

For the Seventh Circuit.

February 3, 1945.

Before:

Hon. Evan A. Evans,
Hon. Otto Kerner.

* * (Caption—8703) * *

STIPULATION AND ORDER TO REMAND.

Subject to the approval of the Court, it is hereby stipulated and agreed by and between counsel for petitioner and counsel for respondent that:

1. This matter shall be remanded to the Federal Trade Commission for the purpose of permitting the Commission to reconsider and modify its Findings as to the Facts and Conclusions and its Order to Cease and Desist herein, dated and issued July 28, 1944.

2. When the Federal Trade Commission has issued its modified Order to Cease and Desist, the same shall be certified to and filed with the Court as a part of the record in this cause.

3. The printing of the record and all further proceedings herein shall be stayed pending the filing by the Federal Trade Commission of its modified Findings as to the Facts and Conclusion and its modified Order to Cease and Desist.

93 4. Nothing herein is intended, or shall be taken, to preclude the petitioner from obtaining a review of such modified findings as to the Facts and Conclusion and such modified Order to Cease and Desist as the Federal Trade Commission may issue, and within sixty days from the date on which the Federal Trade Commission files herein its modified Findings as to the Facts and Conclu-

sion and its modified Order to Cease and Desist, petitioner may file an amended petition to review and an amended statement of points.

Dated at Washington, D. C., this January 31, 1945.

/S/ L. M. McBride,
Attorney for Petitioner.
/S/ Joseph J. Smith, Jr.,
Assistant Chief Counsel,
Attorney for the Federal Trade Commission.

By the Court:

Approved and so ordered this 3rd day of February, 1945.

95 IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

* * (Caption—8703) * *

CROSS-PETITION OF THE FEDERAL TRADE COMMISSION.

To the Honorable United States Circuit Court of Appeals for the Seventh Circuit:

Comes now the Federal Trade Commission, respondent, and files this its cross-petition against Morton Salt Company, petitioner, and respectively shows unto the Court that:

1. On June 14, 1945, petitioner filed herein its amended petition praying this Court to review and set aside a certain modified order to cease and desist issued by the respondent on April 14, 1945, in the Matter of Morton Salt Company, Federal Trade Commission Docket No. 4319. Said order required petitioner to cease and desist from engaging in certain conduct and practices, therein specified, found by the respondent to be in violation of the provisions of § 2 (a) of the Clayton Act, as amended by the Robinson-Patman Act (49 Stat. 1526; 15 U.S.C.A. § 13 (a)).

96 2. Said modified order to cease and desist was duly served upon petitioner on April 16, 1945, and since said date has been and is now in full force and effect.

3. Respondent has certified and filed with the Court

herein a transcript of the entire record of the proceeding in which said modified order to cease and desist was entered. Such proceeding was had in compliance with and in due conformity to all provisions of law, and the modified findings as to the facts and conclusion and modified order to cease and desist made and entered therein by respondent are valid.

4. By virtue of the provisions of § 11 of the Clayton Act (38 Stat. 734, 735-736; 15 U.S.C.A. § 21), this Court has jurisdiction and power to make and enter upon the pleadings, testimony and proceedings herein a decree affirming said modified order to cease and desist and commanding petitioner to obey the same and comply therewith.

Wherefore, the Federal Trade Commission, respondent, prays that petitioner's amended petition to review be dismissed, and that the Court do make and enter herein a
97 decree affirming the respondent's modified order to cease and desist and commanding Morton Salt Company, petitioner, to obey the same and comply therewith.

Respectfully submitted,
Federal Trade Commission,
By Joseph J. Smith, Jr.,
Assistant Chief Counsel,
Attorney for Federal Trade Commission.

Washington, D. C., July 3, 1945.

By its attorney, Morton Salt Company, petitioner, acknowledges service upon it this day of a copy of the above and foregoing cross-petition.

This 5th day of July, 1945.

L. M. McBride,
Attorney for Petitioner.

98 Endorsed: In the United States Circuit Court of Appeals * * (Caption—8703) * * Cross-Petition of the Federal Trade Commission. Filed July 6, 1945, Kenneth J. Carrick, Clerk.

99 IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

* * * (Caption—8703) * * *

RESPONDENT'S DESIGNATION OF CONTENTS OF PRINTED RECORD.

Pursuant to Paragraph 5 (a) of Rule 35 of the Rules of the United States Circuit Court of Appeals for the Seventh Circuit, the Federal Trade Commission, respondent in the above matter, designates the following documents for inclusion in the printed record in this proceeding:

1. Petitioner's Amended Statement of Points.
2. Cross-petition of the Federal Trade Commission.

Joseph J. Smith, Jr.,
Assistant Chief Counsel,
Attorney for Federal Trade Commission.

Dated at Washington, D. C., July 3, 1945.

By its attorney, Morton Salt Company, petitioner, acknowledges service upon it this day of a copy of the above and foregoing designation.
This 5th day of July, 1945.

L. M. McBride,
Attorney for Petitioner.

100 Endorsed: In the United States Circuit Court of Appeals. * * (Caption—8703). * * Respondent's Designation of Contents of Printed Record. Filed July 6, 1945. Kenneth J. Carrick, Clerk.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of Volume 3 of the printed record, being one of three volumes of said printed record, filed November 12, 1946, in Cause No. 8703, Morton Salt Company, Petitioner vs. Federal Trade Commission, Respondent, as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 21st day of November A. D. 1947.

(S) KENNETH J. CARRICK,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

[SEAL]

By (S) R. HAYS BLANCHARD,
Chief Deputy Clerk.

PLACITA

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit, held in the City of Chicago, and begun on the third day of October, in the year of our Lord one thousand nine hundred and forty-four, and of our Independence, the one hundred and sixty-ninth.

No. 8703

MORTON SALT COMPANY, PETITIONER

vs.

FEDERAL TRADE COMMISSION, RESPONDENT

Petition for Review of Order of the Federal Trade Commission

And, to wit, on the fourteenth day of April 1947, the following further proceedings were had and entered of record, to wit:

Monday, April 14, 1947

Court met pursuant to adjournment.

Before Hon. WILLIAM M. SPARNA, Circuit Judge; Hon. SHERMAN MINTON, Circuit Judge; Hon. CHARLES G. BRONSON, District Judge.

No. 8703

MORTON SALT COMPANY, PETITIONER

vs.

FEDERAL TRADE COMMISSION, RESPONDENT

Petition for Review of Order of the Federal Trade Commission

Now this day come the parties by their counsel, and this cause comes on to be heard on the transcript of the record and the briefs of counsel, and on oral argument by Mr. L. M. McBride for the Petitioner, and by Mr. Donovan Divet, counsel for the respondent, and the Court takes this matter under advisement.

And afterwards, to wit, on the twenty-seventh day of May 1947, there was filed in the office of the Clerk of this Court the Opinion of the Court, which said Opinion is in the words and figures following, to wit:

In the United States Circuit Court of Appeals for the Seventh Circuit

No. 8703. October Term, 1946, April Session, 1947

MORTON SALT COMPANY, PETITIONER

vs.

FEDERAL TRADE COMMISSION, RESPONDENT

Petition for Review of Order of the Federal Trade Commission

May 27, 1947

Before SPARKS and MINTON, Circuit Judges, and BRIGGLE, District Judge.

BRIGGLE, District Judge. The petitioner seeks to set aside a modified order of the respondent Commission to cease and desist from discriminating in the price of its salt products of like grade and quality as among wholesale or retail dealers when the differences in price are not justified in

"* * * differences in the cost of manufacture, sale, or delivery resulting from differing methods or quantities in which such products are sold or delivered (a) by selling such products to some wholesalers thereof at prices different from the prices charged other wholesalers who in fact compete in the sale and distribution of such products; provided, however, that this shall not prevent price differences of less than five cents per case which do not tend to lessen, injure, or destroy competition among such wholesalers;

(b) by selling such products to some retailers thereof at prices different from the prices charged other retailers who in fact compete in the sale and distribution of such products; provided, however, that this shall not prevent price differences of less than five cents per case which do not tend to lessen, injure, or destroy competition among such retailers; (c) by selling such products to any retailer at prices lower than prices charged wholesalers whose customers compete with such retailer. For the purposes of comparison, the term 'price' as used in this order takes into account discounts, rebates, allowances, and other terms and conditions of sale."

The order complained of issued in a proceeding initiated by the respondent Commission in which it charged petitioner with discriminating in price beween different purchasers of its product through quantity discounts in effect since June 19, 1936, in violation of Section 2 (a) of the Clayton Anti-Trust Act, as amended by the Act, commonly referred to as the Robinson-Patman Price Discrimination Act (Act of June 19, 1936, U. S. C. A. Title 15, Sec. 13). The respondent Commission has filed a cross-petition praying affirmance and enforcement of its modified order.

The complaint issued on September 18, 1940. After extensive hearings the original findings and order issued on July 28, 1944. In October of that year a petition for review was filed in this Court and in February of 1945, pursuant to stipulation, it was ordered that the cause be remanded to the Federal Trade Commission for modification of findings of fact and of the cease and desist order. The modified order now before the Court issue by the respondent Commission on April 14, 1945.

Petitioner is an Illinois corporation producing, manufacturing and selling salt in interstate commerce in all parts of the United States to wholesalers, retailers and consumers, and is one of the largest producers and distributors of this product in the country. Table salt is the only product involved in this proceeding. Table salts produced and distributed by petitioner are variously known as Morton's free running, plain and iodized, Morton's Blue Label, Morton's Blue Package, and Morton's round can. Blue Label or Blue Package salt is packed and sold 24 packages to the carton or case, and this variety appears to also be identified as round can, iodized, etc. This grade or variety will be referred to as Blue Label.

In selling Blue Label salt petitioner allows three separate discounts, all based on purchases of very large quantities. A fourth discount applies to other varieties of table salt. These price differentials and the basis thereof are substantially, as follows:

(1) Blue Label salt sells for $1.50 per case when purchased in carload lots and at $1.60 when purchased in less than carload lots.

The ten cent differential approximates the extra cost of handling a less than carload shipment moving from a warehouse or other car destination point to some outside point, entailing a double handling. In such cases the freight would be paid by petitioner and the amount thereof might exceed or be less than the ten cent differential.

(2) A rebate of ten cents from the $1.50 a case price applicable to carload shipments is also granted to customers purchasing 5,000 or more cases in any consecutive 12 month period.

(3) In lieu of the ten cent rebate to purchasers of 5,000 or more cases of this salt, a rebate of fifteen cents a case from the $1.50 price is allowed to purchasers of 50,000 or more cases during any consecutive 12 month period.

(4) To purchasers of $50,000 or more of table salt other than the Blue Package variety, in any 12 consecutive month period, there is granted a one unit (about 5%) discount. Although this discount is not allowed on the Blue Package purchases, these purchases are included in the computation of total purchases of a customer which determine whether or not that customer has qualified as a $50,000 discount buyer. In computing the $50,000 bracket, f. o. b. plant prices are used for all items except the Blue Package, regardless of other discounts, and the delivered price of the Blue Package is used regardless of other discounts.

The ten cent per case, fifteen cent per case and $50,000 discounts are based upon quantity sales but are not related by evidence in the record to any specified economies resulting to petitioner from cumulative purchases of the size covered by these respective discounts. In this respect these discounts differ from the carload discount of ten cents a case.

The carload discount (No. 1) has been in effect since the organization of the Morton Salt Company in 1922. The 5,000 case (No. 2) and 50,000 case (No. 3) discounts were introduced by the Company in 1927 or 1928 and have not since then been changed. The $50,000 discount (No. 4) was started in 1933 or 1934 and since then has been unchanged.

In addition to these standard regular quantity discounts, it appears from the record that petitioner in a few instances has made special allowances or discounts of a competitive nature applicable to particular customers and limited areas. The findings and order of the Commission are in part predicated upon the so-called competitive adjustments and same should be distinguished from the general price discounts above described and the findings in respect thereto. The findings and order of the Commission in respect to the general price discounts raises the basic questions now in controversy. We will hereinafter refer to these discounts as "quantity" discounts.

The quantity discounts applicable to the table salt sales of petitioner are open and available on equal terms to all customers, and it is not contended that any of said discounts or the price system which embraces them all was formulated to give any particular customer or customers or a selected class of customers a cost advantage over others who qualify therefor by quantity purchases. It is not claimed that there has been anything secret, local, special or personal about any such quantity discount as offered by petitioner to any of its customers. Each quantity discount and the quantity discount system of petitioner were and are national in scope, published, known, and equally available to all. At all times pertinent to the present controversy these quantity discounts conformed with trade practices generally in the distribution and sale of staple merchandise by other producers and manufacturers of such merchandise. If the quantity price system of petitioner is inherently discriminatory, within the meaning of this act, as contended by the respondent Commission, then such discrimination is inherent in, and inseparable from the quantity discount price structures of many other commodities similarly manufactured, sold, and distributed. This conclusion is implicit in the findings, as based upon the evidence, and in the order of the Commission, and gives a scope to the determination of the instant question beyond its immediate effect upon the business practices of petitioner.

Section 2 (a) of the Clayton Act, as amended, omitting all proviso clauses, is, as follows:

"It shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities *of like grade and quality, where either or any of the purchases involved in such discrimination are in commerce, where such* commodities are sold for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, and where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, *or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them.*"

The italicized language was inserted in the original section by the 1936 amendment (Robinson-Patman Act).

The original proviso to Section 2 (a), insofar as pertinent, read

"Provided, that nothing herein contained shall prevent discrimination in price by the purchasers of commodities on account of differences in the grade, quality or quantity of the commodities

sold, or that makes only due allowances for differences in the cost of selling or transportation. * * *"

The 1936 amendment changed this language to read

"Provided, that nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered: Provided, however, that the Federal Trade Commission may, after due investigation and hearing to all interested parties, fix and establish quantity limits, and revise the same as it finds necessary, as to particular commodities or classes of commodities, where it finds that available purchasers in greater quantities are so few as to render differentials on account thereof unjustly discriminatory or promotive of monopoly in any line of commerce; and the foregoing shall then not be construed to permit differentials based on differences in quantities greater than those so fixed and established."

In view of the questions raised, Section 2(b) of the Act, contained in the 1936 amendment, is also pertinent, and is, as follows:

"Upon proof being made, at any hearing on a complaint under this section, that there has been discrimination in price or services or facilities furnished, the burden of rebutting the prima facie case thus made by showing justification shall be upon the person charged with a violation of this section, and unless justification shall be affirmatively shown, the Commission is authorized to issue an order terminating the discrimination: Provided, however, that nothing (herein contained) * * * shall prevent a seller rebutting the prima facie case thus made by showing that his lower price or the furnishing of services or facilities to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor, or the services or facilities furnished by a competitor." (U. S. C. A. Title 15, Sec. 13.)

The original section did not apply to quantity discounts. Under the amended section a quantity discount based upon an actual difference in the cost of manufacture, sale or delivery resulting from the different method or quantity in which petitioner sells its table salt is not in violation of the section because of the express language of the first proviso to the amended section

The basic, prime questions in dispute are whether said quantity discounts of petitioner are discriminatory as a matter of law, and do they inherently have the probable effect upon competition condemned by the Act. There arise several supplementary and perhaps controlling questions upon that phase of the case which relates to general quantity discounts. There are also presented similar questions in respect to the alleged competitive price adjust-

ments, and whether the order in its scope and sweeping generality exceeds the jurisdiction of the Commission.

We take the view that discrimination within the meaning of the Act is not synonymous with harmless differentiation. One discriminates wherever he marks a difference, in the general sense, and a difference is marked by drawing any distinction. However, discrimination in respect to regulation of commerce is not harmless differentiation. It is the act of unfairly, injuriously and prejudicially distinguishing between persons or objects, where economically speaking a sound and fair distinction does not exist. It occurs as a matter of law only when Section 2 (a) of the Clayton Act, as amended, is in fact violated.

A distinction in price based upon the quantity sold and conforming with reasonable, customary, and accepted economic differences does not inherently import an adverse effect upon competition, or the likelihood thereof, condemned by said Act. This Court recently took this view upon the somewhat similar price differentials based on type of containers and quantities sold in the case of Corn Products Co. v. Federal Trade Commission (C. C. A. 7), 144 Fed. (2), 211, wherein we said:

"Under Section 2 (a) it is unlawful to discriminate in price between different purchasers where the effect 'may be' substantially to lessen competition or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination. It is the congressional intent to halt in its incipiency any possible injury to the public before it may have actually weakened the fabric of fair competition."

* * * * *

"Petitioners shipped its products to its customers in carload lots, tank-truck loads, returnable steel drums, barrels, half barrels, 10-gallon kegs, and 5-gallon kegs. An established differential in prices existed, dependent upon the size of the containers, the additional price per 100 weight over tank-car prices being as follows: when shipped in tank trucks of the customer, 2 cents; when delivered by petitioners' equipment, 10 cents; when shipped in returnable steel drums, when there is no return freight paid, 13 cents; when the return freight on the empty drum is between 50 cents and 75 cents per hundred, 18 cents; when it is between 76 cents and 90 cents per hundred, 23 cents; when it is between 91 cents and $1, 28 cents; when the return freight on the empty drum is more than $1 per hundred, 33 cents; 5-gallon kegs, $1.08; 10-gallon kegs, 98 cents; half barrels, 56 cents; barrels, 33 cents. This is the only evidence submitted upon this issue and upon it the Commission found petitioners guilty of unlawful discrimination.

"The evidence is merely that the smaller the container the greater proportionately the cost. There is nothing to show that this resulted in any discrimination among competing purchasers other than to create such differences as normally arise in buying in smaller quantities or in larger quantities. We think the facts furnish no basis whatever for any sound inference of violation of the law in this respect."

In the somewhat similar case of Lipson v. Socony Vacuum Corporation (C. C. A. 1), 87 Fed. (2), 265, it was asserted that a certain contract was in violation of Section 3 of the Clayton Act. The Court said:

"It is obvious from his declarations that the defendants' policy does not affect the amount of sales by the plaintiff of the defendants' products, but only his profits, since the inference is clear that he has supplied all demands of his customers for 'Socony' gasoline, though at a less profit than if he could buy on the tank-car market. He does not allege, however, in his amended declaration, that he is equipped to accept gasoline at his filling station in tank cars, or that his profits are so small that he must give up supplying his customers with 'Socony' products. The inference is also clear that he buys and sells the products of other integrated or independent companies on the same terms as those of the defendants. There is obviously no discrimination in terms or price between him and other retail customers of the defendants."

It has always been necessary to prove that price differentials are likely to cause injury, create monopoly, or otherwise offend in the manner condemned by Section 2. Such injury or threat of injury is not inferable from the price structure alone. While inferences are sometimes indulged they are not inferences of facts based upon harmless differentials, equally reconcilable with other inferences, from which the required threat of injury or actual injury to competition is inferred. If facts are established reasonable inferences may be drawn. If the facts established also support other inferences than those supporting the offense, such inferences may be drawn. In case the facts are equally reconcilable with an inference in favor of innocence of wrong doing and the commission of the offense, the inference of innocence should prevail.

The respondent relies upon the decision of the Supreme Court in the Corn Products case, which affirmed the decision of this Court, supra. There the facts which might occur from the prices charged were agreed to by stipulation. The possibility of injury to competition was reasonably to be inferred from such admitted result of the practice complained of. In that case the Supreme Court said:

"It was stipulated, and the Commission found, that the allowances in question were 'sufficient,' if and when reflected in whole or in substantial part in resale prices, to attract business to the favored purchasers away from their competitors, 'or to force (their) competitors to resell. * * * at a substantially reduced profit, or to refrain from reselling.' But it is asserted that there is no evidence that the allowances ever were reflected in the purchasers' resale prices. This argument loses sight of the statutory command. As we have said, the statute does not require that the discriminations must in fact have harmed competition, but only that there is a reasonable possibility that they 'may' have such an effect. We think that it was permissible for the Commission to infer that these discriminatory allowances were a substantial threat to competition." (Corn Products Co. v. Federal Trade Commission, 324 U. S. 726, 89 L. Ed. 1320, 1334.)

By two hypothetical questions propounded to witnesses, many of whom were not shown to possess any qualifications for the opinion given, the Commission attempted to establish a probable result from the continuance of the price discount system of petitioner from which the possibility of injury to competition might be inferred. These opinions are at variance insofar as injury defined by the Act is concerned with the actual facts admitted by many of the witnesses whose opinions were sought, and as otherwise established. One question was, "If you were selling Morton's Blue Package salt at $1.65 per case while at the same time a competitor seller was selling it for $1.63 per case, would your business be affected?" The similar question was, "If you were paying $1.50 per case for Morton's Blue package salt while a competitor was paying $1.40, would your business be affected?" Fifty-one of the Commission's witnesses were thus interrogated over petitioner's objection. Thirty-two thought their business might be affected. None specified in what manner, to what extent, or what bearing such injury might have upon their competitive position or business profit. Twenty-nine (some of the thirty-two included) observed that while the competitor enjoying the discount might have an opportunity to make more profit, there would be no effect on competition, if, as the record demonstrates to be the fact, the discount was not used to reduce the sale price of the product. This had not occurred in the past.

Any businessman would readily admit that to some degree the price paid by a competitor for a product sold by him affects his business, but that is far from establishing that such price differential would force either of them to resell at a substantially reduced profit or to refrain from reselling as was stipulated in the Corn Products case, supra. This does not inferentially establish

that the competitive position of either of them is being or may be injured, or that competition in the wholesale or retail business in the same line of commerce in general is being or may be injured or that the price differentials in question actually affect or may affect the competitive resale fluctuations in the trade.

The record in this case shows that wholesalers and retailers attempt only to stay in general line with competitors' prices; they distinguish between the effect of regular and special sale prices, and between the prices of cash-and-carry houses or stores and those of regular service houses or stores; competition between other salt manufacturers or between salt wholesalers and retailers has not been injured, and monopoly has not been promoted by the quantity price structure for the salt products manufactured, sold, and delivered by petitioner, and there is no evidence that such will be the probable effect from a continuance thereof. In our opinion the Commission has confused "injury to competition" with the normal effect resulting from the differences which normally arise in the buying of smaller or larger quantities of any product, which we held did not constitute wrongful discrimination (Corn Products Co. v. Federal Trade Commission, supra, 144 Fed. (2) 220).

Contrary to the inferences drawn by the respondent Commission upon this foundation, the evidence shows substantial increases in sales to all nondiscount customers in all trade areas for the entire period covered by the Commission's evidence. The inference, if any could be drawn, was that the quantity discount system of petitioner tended to increase, not injure, competition. The least that can be said for this evidence is that it completely rebuts the opinion evidence elicited upon the hypothetical questions and renders same a wholly insufficient foundation for the inference of injury, or probability of injury, to competition.

The quantity carload discount of petitioner was related by substantial and uncontroverted evidence to the cost of the sale and delivery of petitioner's product resulting from the different method of handling a carload quantity in the sale and delivery to a carload-quantity buyer from the method of handling lesser quantities. It cannot be said from the record that this differential exceeds a due allowance for the difference in such costs.

In respect to the other quantity discounts, it does not appear that the differentials resulting from the discounts are not based upon or related to due cost allowances in the manufacture, sale and delivery of these products. Neither is there testimony to the contrary. As pointed out in the brief of the respondent Commission, a wide gap separates the normal purchaser from even the 5,000 case Blue Label customer and an even wider gap separates the latter from a 50,000 case Blue Label customer, and an equally wide or even

wider gap separates the $50,000 standard salt purchaser from the small-quantity normal purchaser.

Where price differentials are determined solely by the quantity of the product purchased and the difference in the specified units in each bracket is large and substantial so as to show a relationship between the cost advantages deriving from the large-scale business and price differentials, and such price differentials are a relatively small part of the selling price, as in this case, no presumption should arise that such differentials do not correspond with the due cost allowances of the vendor in the manufacture, sale and delivery of his product. This would especially be true where the vendor engaged in the combined activity of manufacturing, selling and distributing, as does petitioner. This is the instant case.

Upon the establishment of the facts shown by this record, was the respondent Commission justified in concluding that these price differentials did not correspond with such due allowances, by reason of the failure of the petitioner to affirmatively prove by direct evidence such due allowances were the bases for its quantity discount system? We think not under facts such as these. Upon different facts, especially if the price and discount structure should in any case be closely bracketed with disproportionate price differentials, this result might not apply. The facts would determine. Moreover, we are not prepared to say that the relationship of quantity price differentials to due cost allowances is an affirmative defense of justification to discrimination contemplated by Section 2 (b), for the reason that the defense contemplated by that section is not a defense to any price discrimination, however harmless, but to the wrongful price discrimination forbidden by Section 2 (a). The defense of justification is the defense to a violation either admitted or established.

In the absence of evidence and finding that a particular price derived from a quantity discount is discriminatory, and carries the probability of injury to competition, etc., and, in the case of quantity price differentials, that same were not related to reasonable cost allowances, there would be no wrongful discrimination, and the defense of justification would not be in order. One does not justify an act which is harmless, inoffensive and legal. One such defense is specifically reserved by Section 2 (b), and is that the lower charge, although discriminatory and injurious, was, nevertheless, made in good faith to meet competition.

There was no substantial evidence and no finding that these specific discounts were wrongfully discriminatory. The general and all-inclusive legal conclusion and finding (paragraph 10) "That the effect of the discriminations in price, including discounts, rebates and allowances, generally and specifically described

herein may be substantially to lessen competition," is insufficien
The burden of proving the wrongful discrimination as defined b
Section 2 (a) upon the evidence in this case did not shift by reaso
thereof under Section 2 (b) of the Act.

The so-called competitive price adjustments in special instanc
and limited areas, are found discriminatory. We find that the
is substantial evidence tending to support the findings of the Co
mission that these so-called adjustments for whatever purpo
made are not maintained to meet the lower prices of present co
petition, or if orginally so made, are not now continued for suc
purpose, and are discriminatory. The respondent Commissio
does not, however, find that the effect of such discrimination is
substantially lessen competition, or tend to create a monopoly
to injure, destroy or prevent competition with petitioner or wit
its customers who receive the benefit of these discriminatory price
and there is little evidence upon this question. Such facts an
supporting findings thereon are essential elements under the A
and must be found to exist for the Commission to exercise its juri
diction in issuing the order in question. These facts were not a
mitted. The general finding is insufficient for this purpose.

It is contended by the respondent Commission that its finding
as to the facts, as supported by testimony, are conclusive. (Se
tion 11 of the Clayton Act.) However, this provision as inte
preted by the Courts does not relfeve the Commission of makin
a substantial showing and proper findings. The Supreme Cou
has said in respect to a similar statutory provision:

"Section 10 (e) of the Act provides: '* * * The findings o
the Board as to the facts, if supported by evidence, shall be co
clusive.' But as has often been pointed out, this, as in the case o
other findings by administrative bodies, means evidence which
substantial, that is, affording a substantial basis of fact fro
which the fact in issue can be reasonably inferred. * * * Sub
stantial evidence is more than a scintilla, and must do more tha
create a suspicion of the existence of the fact to be establishe
'It means such relevant evidence as a reasonable mind might accep
as adequate to support a conclusion.' * * * and it must b
enough to justify, if the trial were to a jury, a refusal to direct
verdict when the conclusion sought to be drawn from it is on
of fact for the jury." (National Labor R. Board v. Columbia
E. & Stamping Co., 306; U. S. 292, 299, 83 L. Ed. 660, 665, 59 S. C
501, 505.)

To like effect see Consolidated Edison Co. v. National Labor R
Board, 305 U. S. 197, 229, 83 L. Ed. 126, 140, 59 S. Ct. 206, 216
B. S. Pearsall Butter Co. v. Federal Trade Commission, 292 Fe
720, 723; Carlay Co. v. Federal Trade Commission, 153 Fed. (2)

493, 496. The evidence must disclose something considerably more than a mere possibility of injury. Standard Fashion Co. v. Magrane-Houston Co., 258 U. S. 346, 356, 66 L. Ed. 653, 658, 42 S. Ct. 360, 362; International Shoe Co. v. Federal Trade Commission, 280 U. S. 291, 298, 74 L. Ed. 431, 441, 50 S. Ct. 89, 91; Standard Oil Co. v. Federal Trade Commission, 282 Fed. 81, 86, Aff'd 261 U. S. 463, 43 S. Ct. 450. If competition still flourishes or increases after the acts complained of have been committed, then the evidence of possibility of injury must be convincing. Pennsylvania R. Co. v. Interstate Commerce Commission, 66 Fed. (2) 37, 38, 39, aff'd 291 U. S. 651, 78 L. Ed. 1045, 54 S. Ct. 559; Pick Mfg. Co. v. General Motors Corp., 80 Fed. (2) 641, 644, aff'd 299 U. S. 3, 81 L. Ed. 4, 57 S. Ct. 1; Standard Oil of N. Y. v. Federal Trade Commission, 273 Fed. 478, 482.

Petitioner complains of the general sweeping language of the order to cease and desist and urges that the same exceeds the jurisdiction of the Commission. The gist of this order is to require the petitioner to conduct its business generally at its peril, leaving the Commission or any person or litigant claiming injury to harass petitioner by proceedings under the Act for a mistake in interpretation or application of the order. In a similar case in disposing of a sweeping and general order of the National Labor Relations Board, the Supreme Court said:

"But the mere fact that a court has found that a defendant has committed an act in violation of a statute does not justify an injunction broadly to obey the statute and thus subject the defendant to contempt proceedings if he shall at any time in the future commit some new violation unlike and unrelated to that with which he was originally charged. * * *

"We hold only that the National Labor Relations Act does not give the Board an authority, which courts cannot rightly exercise, to enjoin violations of all the provisions of the statute merely because the violation of one has been found." (National Labor Relations Board v. Express Pub. Co., 312 U. S. 426, 435, 85 L. Ed. 930, 936, 61 S. Ct. 693.)

This Court took a similar view in respect to an order of the Federal Trade Commission in Milk and Ice Cream Can Institute v. Federal Trade Commission, 152 Fed. (2) 478, 483, in which we sustained specific provisions but held the sweeping, general, and catch-all provisions to be beyond the jurisdiction of the Commission. This Court said:

"We are of the view, however, that one provision contained in paragraph (7) of the order should be eliminated. By it petitioners are enjoined from 'formulating or putting into operation any other practice or plan which has the purpose or effect of fixing or main-

taining prices for metal milk or ice cream cans." The present plan has been tested and found unlawful and we see no reason why some other plan of which the Commission might complain should not be tested in the usual way rather than in a proceeding for violating the cease and desist order, as would be the case if this provision should remain in the order."

This objection to the order of the Commission is equally applicable in our case and should be sustained.

The prayer of the petitioner should be allowed and the findings and order of the respondent Commission are set aside and its complaint against the petitioner dismissed.

MINTON, Circuit Judge, Dissenting. If I, a small buyer of salt, have to pay more for my salt than a larger buyer does because he is a large buyer, it seems clear to me that I have been discriminated against as to price. It must have seemed that way to Congress, because under the Clayton Act quantity discounts were expressly excluded from discrimination. The Robinson-Patman amendment to the Clayton Act eliminated the exclusion of quantity discounts, unless related to the cost of production, sale, and delivery. See Goodyear Tire & Rubber Co. v. Federal Trade Commission, 101 F. 2d 620–624. I therefore think that quantity discounts are discriminatory per se and can be justified only when properly related to the cost of production, sale, and delivery.

Discrimination must be such that its effect "may be" substantially to lessen competition. It does not have to be shown, and therefore found by the Commission, that such discrimination actually lessened competition, etc. It is sufficient if it is found that there is a reasonable possibility that the discriminatory acts "may" have such an effect. Corn Products Refining Co. et al. v. Federal Trade Commission, 324 U. S. 726, 65 S. Ct. 961, 89 L. Ed. 1320. This called for the expert judgment of the Commission, and the Commission in its findings found that the effect of the discriminatory acts of the petitioner "may be substantially to lessen competition in the line of commerce in which the purchaser receiving the benefit of said discriminatory price is engaged and to injure, destroy, and prevent competition between those purchasers receiving the benefit of said discriminatory prices, discounts, rebates, and allowances and those to whom they are denied."

This ultimate finding of fact is based upon subsidiary findings which in turn have substantial evidence in the record to support them.

The quantity discounts, in my opinion, are discriminatory and may have the effect denounced by the statute. The fact of the discrimination itself, it seems to me, would have supported an inference that the effect may be to lessen competition. The Supreme

Court held such an inference would have been justified in the case of Corn Products Refining Co. et al. v. Federal Trade Commission, supra. Mr. Chief Justice Stone said in that case (p. 742): "We think that it was permissible for the Commission to infer that these discriminatory allowances were a substantial threat to competition."

The same thing seems true to me in the instant case, but there was abundant evidence in the record to support the finding, in addition to proper inferences. I think the order should be enforced.

A true Copy:

Teste:

Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

And on the same day, to wit, on the twenty-seventh day of May 1947, the following further proceedings were had and entered of record, to wit;

Tuesday, May 27, 1947

Court met pursuant to adjournment.

Before Hon. WILLIAM M. SPARKS, Circuit Judge; Hon. SHERMAN MINTON, Circuit Judge; Hon. CHARLES G. BRIGGLE, District Judge.

No. 8703

MORTON SALT COMPANY, PETITIONER

vs.

FEDERAL TRADE COMMISSION, RESPONDENT

Petition for Review of an Order of the Federal Trade Commission

This cause came on to be heard on the transcript of the record from the Federal Trade Commission and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this Court that the findings and order of the Federal Trade Commission entered in this cause on July 28, 1944, and modified on April 14, 1945, be, and the same are hereby, set aside and the Respondent's complaint against the Petitioner is dismissed.

And afterwards, to wit, on the fifth day of June 1947, there was filed in the office of the Clerk of this Court, a stipulation to extend the time for a Petition for Rehearing to July 7, 1947, which said stipulation is not copied here.

And on the same day, to wit, on the fifth day of June 1947, the

following further proceedings were had and entered of record, to wit:

Thursday, June 5, 1947

Court met pursuant to adjournment.
Before Hon. WILLIAM M. SPARKS, Circuit Judge.

No. 8703

MORTON SALT COMPANY, PETITIONER

vs.

FEDERAL TRADE COMMISSION

Petition for Review of an Order of the Federal Trade Commission

Pursuant to stipulation of counsel, it is ordered that the Respondent's time for filing a petition for Rehearing herein be, and the same is hereby, extended to and including July 7, 1947.

And afterwards, to wit, on the first day of July 1947, there was filed in the office of the Clerk of this Court, a Petition for Rehearing which said Petition is not copied here.

And afterwards, to wit, on the eleventh day of July 1947, there was filed in the office of the Clerk of this Court a stipulation to extend time for filing an answer to the Petition for Rehearing, which said Answer is not copied here.

And on the same day, to wit, on the eleventh day of July 1947, the following further proceedings were had and entered of record, to wit:

Friday, July 11, 1947

Court met pursuant to adjournment.
Before Hon. OTTO KERNER, Circuit Judge.

No. 8703

MORTON SALT COMPANY, PETITIONER

vs.

FEDERAL TRADE COMMISSION, RESPONDENT

Petition for Review of an Order of the Federal Trade Commission

Pursuant to stipulation of counsel, it is ordered that the petitioner's time for filing an answer to the respondent's petition for rehearing be, and the same is hereby, extended to and including August 1, 1947.

And afterwards, to wit, on the thirtieth day of July 1947, there

was filed in the office of the Clerk of this Court an Answer to said petition for rehearing, which said Answer is not copied here.

And afterwards, to wit, on the fourth day of September 1947, the following further proceedings were had and entered of record, to wit:

Thursday, September 4, 1947

Court met pursuant to adjournment.

Before Hon. WILLIAM M. SPARKS, Circuit Judge; Hon. SHERMAN MINTON, Circuit Judge; Hon. CHARLES G. BRIGGLE, District Judge.

No. 8703

MORTON SALT COMPANY, PETITIONER

vs.

FEDERAL TRADE COMMISSION, RESPONDENT

Petition for Review of an Order of the Federal Trade Commission

It is ordered by the Court that the petition for a rehearing of this cause be, and the same is hereby, denied. Minton, Circuit Judge, dissenting.

United States Circuit Court of Appeals for the Seventh Circuit

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing typewritten pages contain a true copy of the order taking cause under advisement, Opinion, Judgment, order extending time to file Rehearing, Reference to Petition for Rehearing, order extending time to answer Petition for Rehearing, Reference to Answer to Petition for Rehearing and Order denying Petition for Rehearing, in Cause No. 8703, Morton Salt Company, Petitioner vs. Federal Trade Commission, Respondent, as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 21st day of November A. D. 1947.

(S) KENNETH J. CARRICK,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

[SEAL]

By R. HAYS BLANCHARD,
Chief Deputy Clerk.

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U. S. GOVERNMENT PRINTING OFFICE: 1947

SUPREME COURT OF THE UNITED STATES

No. 464—October Term, 1947

FEDERAL TRADE COMMISSION, PETITIONER

vs.

MORTON SALT COMPANY

Order allowing certiorari

Filed January 12, 1948

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

U. S. GOVERNMENT PRINTING OFFICE: 1948